



EMPLOYMENT TRIBUNALS

Claimant

Mr Conrad Liburd

Respondent

Central Bedfordshire Council

v

UPON THE CLAIMANT'S APPLICATION dated 22 May 2023 for reconsideration of the Judgment dated 24 April 2023 (sent to the parties on 12 May 2023) under rule 71 of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT on RECONSIDERATION APPLICATION

1. The Tribunal determines that a hearing is not necessary in the interests of justice.
2. The Respondents' reconsideration application is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. The Tribunal gave a Reserved Judgment on 24 April 2023 following a hearing on 6, 7, and 8 December 2022 and 16 and 17 January 2023. The Claimant's complaints were not upheld and his claim was dismissed. The Claimant has applied for reconsideration of the Judgment.
2. I am satisfied that the interests of justice do not require that there is a hearing to determine the Claimant's application for reconsideration and that I can deal with the matter fairly and justly on the strength of his written application.
3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record,

or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later). The Claimant's application has been made in time

4. The starting point clearly has to be the decision the Tribunal reached after the hearing in December 2022 and January 2023. I have re-read it. I consider that the Tribunal set out in detail the reasons for its Judgment. Should these matters be examined on appeal, it would be for the Employment Appeal Tribunal or other appellate court to say whether those reasons and our decision can stand. Any suggestion that our findings were perverse or that we erred in Law is generally a matter for appeal.
5. We also identified in our Judgment certain difficulties experienced by the Claimant in the course of the hearing and the adjustments and steps we took with a view to addressing any disadvantages experienced by him and, as far as possible, in order to put the parties on an equal footing.
6. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed,

“The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.”

7. In Outasight, the Employment Appeal Tribunal was referred to the EAT's Judgment in Redding v EMI Leisure Ltd. EAT/262/81 in which the EAT had observed:

“...When you boil down what is said on [the Claimant's] behalf, it really comes to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, “justice” means justice to both parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation...”

8. Should the Claimant feel that he did not do himself justice in the matter that is not for want of adjustments being made or the Claimant being afforded a reasonable opportunity to state his case.
9. As regards the specific points raised by the Claimant:
 1. The Tribunal's reference to the Claimant pursuing complaints of disability discrimination encompasses his s.15, s.20/21 and s. 26 complaints, each

of which are complaints that he was discriminated against as a disabled person. That is also abundantly clear from the Law and Conclusions section of the Judgment in which we address each of his complaints in detail. The Claimant's observation is misconceived.

2. We considered the entirety of the Claimant's evidence notwithstanding, as we identified in our Judgment, that approximately one half of his witness statement addressed issues not directly touching upon the matters we had to determine. We summarised his evidence in this regard at paragraphs 21 to 45 of our Judgment. It is not necessary in the interests of justice that the Tribunal should reconsider its Judgment because it observed that the Claimant's evidence extended well beyond the issues that fell to be determined.
 3. The Claimant appears to have misunderstood the Tribunal's comments at paragraph 10 of its Judgment. The Judgment is a public document and, at the Claimant's request we did not take steps to exclude from the Judgment, or prevent the publication of, details of sensitive personal data about the Claimant's mental health. Throughout, the hearing was held in public, including when it was heard remotely by CVP. It was not suggested to the Tribunal that members of the public had been excluded from the hearing. The Tribunal certainly did not prevent anyone from attending the hearing.
 4. The Tribunal noted at paragraph 11 of its Judgment that certain medical information had not been included in the Bundle. Elsewhere in the Judgment the Tribunal makes extensive reference to the available medical evidence, including occupational health reports, regarding the Claimant. His health issues are outlined in some detail in paragraphs 9 to 20 of the Judgment. The Tribunal's factual observations at paragraph 11 of its Judgment do not mean that it is necessary in the interests of justice for the Tribunal to reconsider its Judgment.
 5. In our Judgment, we set out why we considered that certain observations by Dr Vivian were measured and sensitively expressed, and accorded with our own observations. Any suggestion that our reference to or reliance upon his report was perverse or that we erred in Law is a matter for appeal. It is not necessary in the interests of justice that we should reconsider our Judgment because the Claimant is critical of Dr Vivian. As our Judgment makes clear, we had regard to the Claimant's concerns but ultimately we concluded that we could rely upon Dr Vivian's report in an overall understanding of the Claimant's health issues and how these impacted him in the workplace.
- 6, 7, 8, 9, 10 & 11.

As I have observed already, any suggestion that our findings were perverse is generally a matter for appeal. The Claimant's observations do not render it necessary in the interests of justice for the Tribunal to reconsider its Judgment. There is no basis to afford the Claimant what would in effect be a 'second bite of the cherry'. I believe that the Tribunal's

Judgment sets out our detailed findings and conclusions such that the parties can understand the reasons why we came to the Judgment that we did. The Tribunal is not required to engage in its Judgment with every piece of evidence or rehearse in detail how the issues were explored in cross examination over the course of a five day hearing. As it is, the Judgment extends to some 46 pages.

12. At paragraph 18 of the Judgment we address the issue that arose in relation to the Hearing Bundle lever arch files and how we dealt with this. The hearing only resumed once we were satisfied that the Claimant felt able to continue and indeed was fit to continue. It is not necessary in the interests of justice that the Tribunal should reconsider its Judgment for this reason.
10. In all the circumstances the application for reconsideration is refused.

Employment Judge Tynan

Date: 23 June 2023

Sent to the parties on: 7 July 2023

GDJ
For the Tribunal Office