



EMPLOYMENT TRIBUNALS

Claimant: Mr D McGonagle

Respondent: Jaguar Land Rover Limited

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

The claimant's email of 22 September 2020 for reconsideration of the judgment in this case is refused.

REASONS

1. By email presented to the tribunal on 22 September 2020, the claimant applied for reconsideration of the judgment that was handed down in writing to the parties on or around 08 September 2020. This request was limited to a request to reconsider the matter of justification of the direct age discrimination complaint that was brought in this case, namely in relation to the RMLAP scheme that was maintained by the respondent. For a full history of the litigation, recourse must be had to the tribunal's earlier judgment and reasons.
2. It appears that, for reasons unknown to me, this request for reconsideration did not make it to me until 26 January 2021, when a member of Judicial Admin forwarded the relevant correspondence to me. I can only apologise for the significant delays that have taken place between the application for reconsideration and it being considered.
3. The position with respect reconsideration of judgments are contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.
4. Under Rule 72 of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Where the application is not refused, the application may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted,

the judge will give the parties a reasonable opportunity to make further written representations.

5. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust** **UKEAT/0002/16/DA**:

- a. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
- b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
- c. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.

6. Furthermore, Simler P, at paragraphs 34 and 35 of Liddington also explained the following:

“A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

7. I have considered carefully the matters that have been raised in the email of 22 September 2020. In my view, they amount to re-arguing of the claim. The claimant had every opportunity to give the evidence and make the arguments he wished to make at the original hearing. Applying the important principle of finality of litigation, it is not in the interests of justice her to allow the claimant to re-argue his case. Nor is it proportionate to do so.
8. Much of the application for reconsideration relates to whether the respondent had properly pleaded the legitimate aims on which it wished to rely on to justify direct age discrimination. At the hearing, on both the first day and the second day, the legitimate aims were explained by Ms Badham as being threefold:
- a. That it was not sustainable to offer legacy schemes to all leavers, and therefore there was a need for the respondent to place restrictions on access
 - b. Reduction in the size of the respondent's salaried headcount and associated costs
 - c. Providing a comfortable exit for successful voluntary redundancy scheme applicants.

9. The legitimate aims correspond with the legitimate aims that have been recorded in the Preliminary Hearing before Employment Judge Cookson on 14 October 2019. Although presented in a manner, which attracted the tribunal's criticism, they have been pleaded and recorded, and the claimant knew of these legitimate aims very early on in the process. It is on the basis of these legitimate aims on which the decision was made.
10. The issue of parity of treatment to members of the Defined Benefit and Defined Contribution scheme was one that was open to the tribunal, taking into account the first of the recorded legitimate aims and the evidence of Mr Tom Falshaw.
11. There is therefore no reasonable prospect of the original decision being varied or revoked.
12. The application for reconsideration is therefore refused.

Employment Judge **Mark Butler**

Date: 02 February 2021