Case No: 2400520/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr H S Gill

Respondent: Warrington Borough Transport Limited

JUDGMENT

The claimant's application dated 8 June 2023 for reconsideration of the judgment sent to the parties on 25 May 2023 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a short email dated 8 June 2023.

2. At the time the reconsideration application was submitted, there had been no request for written reasons related to the Judgment. As it is evident that Mr Gill wishes to challenge the Judgment, and as he is unrepresented, I have prepared written reasons of my own initiative. They are provided alongside this Judgment.

The Law

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

4. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

5. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton** and **anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern**

Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

6. 5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

"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 by 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."

7. Where a party relies on new evidence as the basis for a reconsideration application the Tribunal will apply the principles set out in the case of **Ladd v Marshall 1954 All ER 745, CA**. This is an old and well-known case, and the same principles apply in other types of courts and tribunal. In order for the Tribunal to consider re-opening a case based on fresh evidence it is necessary to show:
   7.1 that the evidence could not have been obtained with reasonable diligence for use at the original hearing;
   7.2 that the evidence is relevant and would probably have had an important influence on the hearing; and
   7.3 that the evidence is apparently credible.

8. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

9. The claimant's email states:

Could you please reconsider your Judgement made on16/05/2023. That's because when you delivered the verdict, I could not think of presenting any evidence of my mental health problems preventing me from applying within the time limit set out. Although, in your judgment, you said that no medical evidence was presented for the mentioned situation, however, during the hearing I was not asked to present such evidence.

I was not sure what evidence I could present. However, now I believe my repeat medical prescriptions record and/or my medical record could form the concerned evidence.

Furthermore, I am normally late for everything and that is because of my low levels of self-control caused by my mental health situation. It was not only with this specific case but with almost every situation in my life that requires a timely response.

10. The basis of the application is therefore an attempt to admit new evidence as to the claimant's mental health which (presumably) is said to explain the delay in presenting his claim.

11. I have sympathy with the claimant as a self-represented litigant, who may have had limited understanding about what evidence would be necessary or helpful at a preliminary hearing on time limits. However, I also note that there was a case management hearing on 21 March 2023 at which Employment Judge Ainscough made careful case management orders seeking to ensure that both parties were prepared for the preliminary hearing, and that the claimant knew that both documentary and witness evidence would have to be provided in advance. It is not for the Tribunal to tell the claimant on what grounds he should rely to seek an extension of time for presenting his claim, and what evidence might support those grounds.

12. I am satisfied which the evidence which the claimant is now seeking to introduce (records of his prescriptions and medical records (presumably from his GP) could, with reasonable diligence, have been obtained for use at the original hearing. The claimant therefore fails at the first part of the **Ladd v Marshall** test. As to the second part, without further explanation of what the records are said to contain, it is not possible to conclude that they would have had an important influence on the hearing.

13. I hold in mind when applying the "interests of justice" test that that test involves the interests of the respondent as well as the claimant. Although Mr Gill will undoubtedly believe that the interests of justice require the decision to be re-opened, in my judgement the respondent's interests in finality of litigation outweigh the claimant's interests in the circumstances of this case.

Conclusion

14. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Dunlop

DATE 11 July 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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20 July 2023
FOR THE TRIBUNAL OFFICE