



EMPLOYMENT TRIBUNALS

Claimant: Mr J Killeen

Respondent: Parrhesia Inc

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. A reserved judgment and reasons was sent to the parties on 25 July 2023. That judgment followed a hearing on 7,8,9,12,13 and 14 June 2023. The Tribunal had in Chambers deliberations on 30 June 2023.

2. After careful consideration, the unanimous judgment of the Tribunal was that the claims brought by the claimant were not well founded and they were dismissed.

3. The claimant's representatives wrote to the Tribunal on 8 August 2023 applying for the judgment to be reconsidered.

4. I have considered the contents of the claimant's application carefully.

5. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

"70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ('the original decision') may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
- 72 (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.
- (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations."

6. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a Judgment could be reviewed. The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J in **Outsight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

7. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

"Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before"..

13. The Tribunal took into account all the evidence, including the claimant's witness statement and oral evidence and found, in context, the remarks were intended to persuade the claimant not to resign and were essentially supportive. The Tribunal's judgment was that the remarks did not have the effect of violating the claimant's

dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and it was not reasonable for the conduct to have that effect.

14. The case of Gardner v Chief Constable of West Yorkshire concerned remarks that were found to relate to the claimant's disability and, taking into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect even though there were not intended to offend.

15. That case concerned comments made in a wholly different context and is not on all fours with this case and is clearly distinguishable.

16. In this case, once again, the Tribunal considered the appropriate legal test and, taking into account the claimant's perception and the other circumstances of the case, the conduct did not have the proscribed effect and it was not reasonable for the conduct to have that effect. The Tribunal found that the remarks were made in an effort to persuade the claimant not to resign and were, essentially, supportive.

17. The claimant conceded that it was said that he'd be a coward if he resigned. This is significantly different from the pleaded case that he was called a coward. The Tribunal also considered the remarks about damaged goods and the need to show loyalty and found that, in all the circumstances, they were not acts of harassment.

18. The Tribunal concluded that, taking into account the claimant's perception and all the other circumstances of the case including whether it was reasonable, that it did not have that effect.

19. There is nothing raised by the claimant's application that would provide a reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

Date: 22 August 2023.