EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Akhigbe	**v**	**(1) St Edward Homes Limited ('SEH')** **(2) All Knight Safety Limited (in voluntary liquidation)** **(3) Ms Julia Oldbury-Davies** **(4) Mr Alan Edgar** **(5) Mr Allan Michaels** **(6) Niblock Electrical Services Limited ('NES')** **(7) Mr Peter Burcow**

RECONSIDERATION JUDGMENT

The claimant's application dated 11 April 2023 for reconsideration of the judgment sent to the parties on 28 March 2023 is refused.

REASONS

Before setting out the reasons for rejection of the claimant's application I note that his application only covers the four claim numbers set out in the heading to this reconsideration judgement in the body of the application. The claimant states in the application that he will be applying for reconsideration in the other claims soon. The following claims were also the subject of the judgement sent to the parties on 28 March 2023: Case Nos: 2301105/2021, 3301405/2021 and 3310936/2022. As of 17 August 2023, no such applications have been received.

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The claimant accepts that the application is in the form of an appeal and almost all of the arguments raised allege either an error of law or racial bias on my part. To the extent that he alleges an error of law that is not the kind of argument which is suitable to be dealt with by way of reconsideration. Where the claimant argues that he was unsuccessful because I ruled against him on

arguments that were raised at the time or misapplied the law in my original decision that is a point which should be argued by way of an appeal.

2. To the extent that he argues racial bias on my part, for reasons I explained further below, he only raises arguments to which I gave careful consideration when I treated previous of racial bias as an application by him for me to recuse myself and which I dismissed by a judgement sent to the parties on 20 July 2022. Where I dealt in that judgement with the same allegations there are no reasonable prospects of this judgement being varied or revoked on those grounds. I have had reference to that judgement in full but do not repeat it here so that these reasons should not be unnecessarily long.

3. The claimant sets out his arguments in 136 paragraphs of a statement with reference to 13 appendices. He mentions 9 specific allegations of error of law or racial bias.

4. He first argues that I was incorrect to fail to find as a fact that the email of 14 November 2020 was a protected disclosure. I was not tasked with determining that as a preliminary issue and applied the correct test for a preliminary hearing. In any event this is not a valid basis for a reconsideration application

5. Next he alleges that I misrepresented his email (see paras 35 to 39). The allegation that I displayed racial bias in my finding that the above email showed an aggressive tone and choice of words is one that I determined in the recusal judgement and I have nothing to add here. In essence this is a perversity challenge and that is not the purpose of a reconsideration.

6. As to his allegation at paragraph 40 to 46, there is no reasonable prospect of me concluding that I misrepresented his email by not expressly referring to the second ‘condition’ for him to report Ms McClelland to the SFA. Again, the claimant disagrees with the conclusion that I reached but here he is seeking to challenge my conclusion that he was guilty of unreasonable conduct within rule 76(1)(a) of the Employment Tribunals Rules of Procedure 2013. That was a ruling I made in a judgement sent the parties on 19 February 2021 and so he is seeking to reconsider that judgment well out of time.

7. The same point can be made of the argument raised in paragraphs 47 to 48. Furthermore, he appears to allege that when I concluded that sending the email in question that was unreasonable conduct within rule 76(1)(a) I failed to apply *dicta* in Martin v Devonshires Solicitors [2011] ICR 352 to the effect that where an employer claims to act on grounds of the way in which a protected disclosure was made rather than on grounds of the disclosure itself, the Tribunal should be slow to recognise that distinction. At the time I adjudged the claimant to have committed unreasonable conduct, he had not alleged that the email was a protected disclosure. Furthermore this is simply a misunderstanding of the circumstances in which Martin v Devonshires applies

8. The claimant criticises paragraph 64 of the judgement by saying that I do not provide examples. In essence this appears to allege that I give insufficient reasons for my conclusion, which is a potential error of law rather than a basis for reconsideration. In any event, I state in that paragraph that there are multiple examples of heightened language and threats in correspondence which seems to me to be sufficient to explain the conclusion I reached at that point namely that the SEH respondents were justified in using external solicitors. As a matter of fact, those examples are to be found in the SEH respondents' skeleton argument at AB page 28 paragraph 79. On any view there are no reasonable prospects that this would cause the judgement to be revoked or varied. I do not accept that the claimant does not have sufficient information to understand the basis of the decision.

9. The conclusion that the claimant used heightened language is also alleged to demonstrate racial bias and the claimant contrasts my observation of those specific pieces of correspondence with a comment made by Kerr J about his conduct in the EAT an earlier hearing. There is no inconsistency there. There is no reasonable prospect that my characterisation is anything other than objectively justified or that any racial stereotyping was involved in it.

10. The arguments raised in paragraph 80 to 95 are not, when analysed, different in substance to those raised in the earlier part of the submission. Again the claimant complains not about a conclusion in the judgement awarding costs in the respondent's favour but about a conclusion in the judgement sent to the parties in February 2021. The allegation of racial bias is identical to that dealt with in paragraph 32 of the recusal judgement sent to the parties of 4 July 2022.

11. In paragraph 98 and following the claimant criticises my decision to take into account his mental health condition when deciding the respondents' costs and/or preparation time order applications. He argues that I appear to have applied a stereotypical view of people with mental health problems. From my reasoning it is absolutely clear that I did not take into account impermissible stereotypes but based my reasoning on medical reports about his mental health that the claimant himself had provided. It is important to take account of all relevant circumstances when deciding whether or not to order costs against a party or to make preparation time order. In the absence of the claimant, there was a particular obligation to take account the potential explanation such as the relevant evidence of the potential impact of his mental health condition.

12. This was something that was weighed in the claimant's favour. It is clear that in that paragraph I was referring to his explanations as to why matters involving concealment of documents were things that he felt particularly strongly about. There is no reasonable prospect that these arguments might lead to the judgement being varied or revoked.

13. His specific complaint in relation to the preparation time order made in favour of the NES respondents appears to be (see paragraph 129 and 130) that I did not

give the claimant an opportunity to challenge a relevant document. He does not explain which document he refers to. In the reserved judgement I explained in detail the procedural steps prior to the hearing, the submissions made by the parties and the dates when they were made available. I explained why I was satisfied that the claimant had had a reasonable opportunity to address the arguments in support of the applications despite his absence from the hearing. I see nothing in this application that suggests there was any procedural mishap that meant the claimant did not have a fair opportunity to make all the points he wished to make.

14. Otherwise the arguments in paragraph 125 to 136 raise allegations of an alleged error of law and racial bias. The first of these is not suitable for reconsideration and the second has been covered in detail in the recusal judgement. There is nothing in these arguments that gives rise to a reasonable prospect of the preparation time order being varied or revoked.

15. So, for reasons I reject the application for reconsideration.

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Employment Judge George

Date: …18 August 2023…………..

Sent to the parties on: 24 August 2023

For the Tribunal Office