EMPLOYMENT TRIBUNALS

First Claimant: Paul Ezikwa
Third Claimant: Charlotte Ezikwa

Respondent: G (anonymised due to an anonymisation order)

UPON APPLICATION made by letter dated ***9 February 2023*** to reconsider the judgment dated ***25 January 2023*** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

1. The claimants' application for reconsideration of the judgment sent to the parties on 26 January 2023 is allowed in part.
2. The first claimant's claim for notice pay succeeds. The amount awarded is £306.63. This is calculated at 3 weeks x £102.21.
3. The third claimant's claim for notice pay succeeds. The amount awarded is £321.27. This is calculated at 3 weeks x £107.09.

REASONS

Introduction

1. This is the application of the first and third claimants for the reconsideration of my judgement dated 25 January 2023. The application was made in time (on the 9 February) as that was the date it was received in the tribunal office.

2. I received the application on 27 March 2023, and subsequently issued directions to the parties on 1 April and on 16 July in order to establish how to deal with the application in accordance with the law. No response was received by any party to my directions dated 16 July. I apologise to the parties for the delay in the promulgation of this decision.

The law

3. Rule 71 of the Employment Tribunal Procedure Rules 2013 says:

"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."

4. Rule 72 of the Employment Tribunal Procedure Rules 2013 says:

"(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"

5. Guidance for Tribunals on how to approach applications for reconsideration was given by the Employment Appeal Tribunal in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

"34. […] 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. 35. 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."

The application

6. The application for reconsideration can be summarised as follows:
   (i) that there was insufficient disclosure by the respondents of detailed information about the care needs of the respondent;
   (ii) there was a lack of evidence about the change in the respondent's health;
   (iii) there was a lack of evidence about the respondent's new care plan;
   (iv) the claimants believed there was evidence given during the hearing that the claimants would have been retained on furlough had the correct duration of the availability of furlough been understood;
   (v) the judgment did not address the availability of suitable work for the claimants while employed by the respondent;
   (vi) documentary evidence about the selection process for redundancy should have been disclosed;
   (vii) the amount of notice pay had been incorrectly calculated by the tribunal;
   (viii) the tribunal had made a mistake in the way it had reached a decision about the ability of the claimants to meet the new care needs of the respondent;
   (ix) the tribunal made a mistake in findings about the funding arrangements for the respondent;
   (x) the tribunal had erred in finding there was some other substantial reason for the redundancy;
   (xi) the tribunal had not taken into account the costs of the claimants when awarding compensation. These included preparation time and an invoice for counsel's fees.

7. The application is opposed by the respondents. The basis of this can be summarised as follows:

   (i) the claimants represented themselves at the final hearing and would only be able to seek preparation time if the grounds for such an order were made out;
   (ii) the claimants seek to re-argue the factual findings of the tribunal;
   (iii) the claimants seek to introduce a disproportionate amount of evidence that is not relevant to the issues in the case;
   (iv) there are no grounds for the judgment to be reconsidered save in respect of the notice pay.

Conclusions

8. It is not in the interests of justice for there to be a hearing to determine this application. This is because sufficient information was provided in the

application and response. Adequate time was given for the parties to make further written representations.

9. It is accepted by the respondent that I had made an error in the calculation of remedy. I agree with the parties, and to that extent I have reconsidered my judgment. The correct calculations are:

   (i) Mr Ezikwa (£511.06 - £408.85) = £102.21 x 3 weeks = £306.63

   (ii) Ms Ezikwa (£535.43 - £428.34) = £107.09 x 3 weeks = £321.27

10. The remainder of the application is either an attempt to introduce new evidence after the hearing concluded or to seek me to reach a different conclusion on the facts.

11. The claimants took issue with the fact that the respondent had not personally attended the hearing or provided a witness statement. There was no requirement for him to do so. This was a case where his agents could provide the material evidence which is what happened. This included evidence about the respondent's care needs in sufficient detail for me to make findings of fact in the case. If there was any documentary evidence which the claimants were aware of, and felt was relevant, this should have been dealt with much earlier in the proceedings and an application made to the tribunal to seek an order for disclosure if necessary.

12. I made clear findings that a genuine redundancy situation had arisen. The care needs of the respondent had been assessed, and a different approach to his care had been sought. The fact that, later on, it was not possible for the planned approach to be carried out does not negate my findings.

13. The claimants say that there was no evidence that the respondent did not have access to large financial resources. This is not the case. Mr Pool gave evidence in that regard, which I accepted (that the respondent's budget had to accommodate his care needs and that this was calculated and paid for by the NHS). There is no requirement for supporting evidence to be produced. Mr Pool said that he did not know how much the respondent earns from work, which I accepted to be the truth.

14. I did not find that Mr Pool said the parties would be entitled to remain on furlough if that scheme extended beyond September 2020. There was clearly some confusion as to when the scheme had ended by the time of the hearing. However, I made clear findings about the relevance of furlough to the case in paragraph 37 of my judgment.

15. There was an error in paragraph 3 of my original judgment. I intended to convey that there were alternative arguments put forward by the respondent. First, the respondent argued that the dismissal was based on redundancy. Second, and in the alternative, it was based on some other substantial reason. I found that the claimants had been made redundant and did not make any findings about whether there was some other substantial reason for the dismissal.

16. The arguments in this case were fully ventilated during the hearing and findings of fact made on the matters which were relevant to the conclusions in my judgment. It is not appropriate to enable re-litigation on points that have been dealt with. There must be finality to litigation. The correct way to challenge this decision is by seeking leave to appeal to the Employment Appeal Tribunal.

17. Costs are not available as compensation in the employment tribunals. A party who wishes to make a claim for costs, or preparation time, must do so in accordance with the procedure rules. The grounds on which a tribunal may award costs are limited. The claimants are referred to Schedule 1 of Employment Tribunal (Constitution and Rules of Procedure Regulations 2013. I am content to treat letter of 9 February 2023 as an application for costs or a preparation time order and will issue directions about that separately in order to give the claimants the opportunity to decide if this is an application they wish to pursue and to provide more detailed representations. The respondent will have the chance to respond to the application.

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Employment Judge **Freshwater**

Date: 4 September 2023

JUDGMENT SENT TO THE PARTIES ON

11 September 2023

FOR THE TRIBUNAL OFFICE