



EMPLOYMENT TRIBUNALS

Claimant: Mr J F Edwards

Respondents:

1. Unite the Union
2. Ms J Formby
3. Ms G Cartmail
4. Mr L McCluskey

JUDGMENT

The application dated 26 May 2023 for reconsideration of the judgment sent to the parties on 4 May 2020 is refused on the grounds that there is no reasonable prospect of that judgment being varied or revoked.

REASONS

Background to this application

1. The application is to reconsider a judgment sent to the parties on 4 May 2020 (the “original decision”). The claimant unsuccessfully applied for reconsideration of this judgment by an application dated 1 August 2022. The judgment refusing this application was sent to the parties on 20 October 2022. The claimant made an application on 3 November 2022 for reconsideration of the judgment sent on 20 October 2022. This application was refused by a judgment sent to the parties on 19 January 2023.

2. The claimant appealed to the Employment Appeal Tribunal against the original decision and the refusals of both applications for reconsideration. At a 3(10) hearing on 16 August 2023, His Honour Judge Barklem has ordered that two grounds of appeal against the original decision are to be considered at a full hearing. The claimant informed HHJ Barklem that further evidence had emerged following disclosure in civil proceedings and that a further application for reconsideration by reference to newly disclosed documents had been made. HHJ Barklem stayed the aspect of the appeal relating to the two reconsideration decisions to allow the Tribunal to have an opportunity to consider the new application for reconsideration and ordered that, if the new application was unsuccessful and an appeal brought against it, the appeals relating to all 3 reconsideration decisions would be before the EAT on a single occasion.

3. This further application for reconsideration dated 26 May was referred to me in August 2023, during a period of leave. I returned from leave on 4 September 2023 and considered the application, together with a further letter from the claimant dated 7 August 2023, in chambers on 6 September 2023.

The application for reconsideration dated 26 May 2023

4. The application is made on the basis that the claimant asserts that new evidence, disclosed to him in civil proceedings on 17 May 2023, would have made a difference to parts of the Tribunal judgment sent to the parties on 4 May 2020 had it been available to the Tribunal at the time of the original hearing.

The Law

5. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provides that a judgment may be reconsidered by a Tribunal where it is necessary in the interests of justice to do so. On reconsideration, a decision may be confirmed, varied or revoked. If revoked, the decision may be taken again.

6. I have to decide, at this consideration of the application under rule 72(1) of the Employment Tribunals Rules of Procedure 2013, whether there is any reasonable prospect of the original decision being varied or revoked as a result of the claimant's application. If I decide there is no reasonable prospect of this happening, I must refuse the application. If I decide there is a reasonable prospect of the original decision being varied or revoked, the application will proceed to a reconsideration hearing. This hearing would be before the full panel which made the original decision, if this is practicable.

The "new" evidence

7. I proceed on the basis of the following assumptions, taking the most favourable position for the claimant, but without deciding:

7.1. that the new evidence disclosed on 17 May 2023 had not previously been provided to the claimant; and

7.2. that the new evidence should have been disclosed in the employment tribunal proceedings.

8. The new evidence the claimant relies on consists of 4 emails, attached to the application dated 26 May 2023 as pages 11 to 14 of that letter. These are as follows. I will refer to these as emails 1 to 4.

Email 1

9. This is an email dated 2 August 2018 sent at 11.51 from Madelene Holdsworth of Slater and Gordon to Mr Lemon and Mr Gillam of Unite. This reads:

"Please find enclosed Advice from Counsel and proposed letter to Mr Edwards.

“Please let me know if you would like to discuss these before I send them to Mr Edwards.”

Email 2

10. This is an email dated 2 August 2018 sent at 12.26 from Mr Lemon to Madelene Holdsworth of Slater and Gordon, copied to Neil Gillam of Unite and Neil Turnbull of Slater and Gordon. This email reads as follows:

“Thank you for forwarding Counsel’s Advice and the draft letter to Mr Edwards.

“Unite’s position is that it will follow the advice of Counsel in terms of which claims to support and tactically which proceedings should be pursued initially.

As such, please can you amend the proposed letter to state that if Mr Edwards wishes to proceed with his claims, then he must also follow Counsel’s advice to issue and stay the PI claim and proceed with the Employment claim at this stage.

“Please let me see the amended letter before it is sent.”

Email 3

11. This is an email dated 2 August 2018 sent at 15.09 from Madelene Holdsworth to Mr Lemon. This reads:

“Sorry for the delay I have been in meetings.

“Here is the amended letter. I will also change the date on counsel’s advice to today.

“Please confirm you are happy with this letter.”

Email 4

12. This is an email dated 2 August 2018 sent at 15.24 from Mr Lemon to Ms Holdsworth. This reads:

“The amended letter is fine. You need to make a slight change in the sentence which starts: If you do not accept Counsel’s Advice...”

“It refers to Unite will not be “support” your pi claim. It needs to say “supporting”.

“Please let me know when the letter and advice has been emailed to the member.”

The claimant's arguments

13. I do not seek to reproduce or summarise the claimant's arguments about the significance of these emails and why he asserts that this new evidence shows that the Tribunal erred because of the respondent's failure to disclose this evidence. The claimant's letters of 26 May 2023 and 7 August 2023 can be read in full by a judge in the Employment Appeal Tribunal if the claimant appeals against this decision. I have read the claimant's letters carefully and considered his arguments before reaching my conclusions.

Conclusions

14. References in these conclusions to paragraph numbers are to paragraphs in the judgment and reasons sent to the parties on 4 May 2020.

15. The claimant's arguments at I – V1 on pages 2-3 of his letter of 26 May 2023 are arguments which do not arise from the new evidence relied on. They are arguments which were either made, or could have been made, by the claimant at the substantive hearing, relying on evidence which was before the Tribunal at that hearing. It would not be in the interests of justice to re-open the litigation to allow the claimant to argue, or re-argue, points which could have been made, or were made, at the original hearing.

16. I do not consider that the claimant has any reasonable prospect of successfully arguing that the new evidence demonstrates the points he asserts at numbers 1-15 on pages 4-8 of his letter of 26 May 2023.

17. The "new" evidence is entirely consistent with the evidence which was before the Tribunal at the original hearing. It adds nothing of any significance to the evidence that was before the Tribunal. I give two examples to demonstrate the consistency.

18. At paragraph 353 we recorded that the claimant was sent further advice from counsel relating to his personal injury claim and interrelationship with the employment tribunal claim on 2 August 2018. Email 4 is anticipating, on 2 August 2018, the letter and counsel's advice being sent to the claimant.

19. At paragraph 356 we recorded that Mr Lemon wrote to the claimant on 3 August 2018 referring to counsel's advice that the claimant should lead with the employment claim and issue protected proceedings for the personal injury claims which would then be stayed pending the employment tribunal proceedings. Email 2 refers to this advice from Counsel and to Unite's position that the claimant needed to follow this advice.

20. Nothing in emails 1-4 has any reasonable prospect of causing the Tribunal to vary or revoke any part of its original decision.

21. I do not consider that anything else in the claimant's letters of 26 May and 7 August 2023 has any reasonable prospect of causing the Tribunal to vary or revoke any part of its original decision.

22. I, therefore, refuse the application for reconsideration on the basis that there is no reasonable prospect of success of the original decision being varied or revoked.

Employment Judge Slater

Date: 6 September 2023

JUDGMENT SENT TO THE PARTIES ON

Date: 13 September

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FOR THE TRIBUNAL OFFICE