# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| Mr Henry Stan Fullah | **v** | (1) Medical Research Council;<br>(2) Professor Susan Gathercole;<br>(3) Mrs Michelle Barthelemy;<br>(4) Dr Tony Peatfield; and<br>(5) Ms Julie Kemp |

**Heard at:** Cambridge **On:** 20 July 2023

**Before:** Employment Judge Ord

**Members:** Ms K Johnson and Mr A Schooler

**Appearances**
**For the Claimants:** Did not attend and was not represented
**For the Respondent:** Mr M Salter, Counsel

## JUDGMENT on RECONSIDERATION

The Claimant's Reconsideration fails.

## REASONS

1. This case has a very long history.

2. The Claimant began employment with the First Respondent on 22 May 2001 and it ended on 8 May 2017.

3. A Full Merits Hearing took place in April 2019 before this Tribunal, the full written Reasons provided on the request of the Claimant and sent to the parties on 28 August 2019.

4. The Claimant appealed the decision and the Employment Appeal Tribunal remitted back to this Tribunal the issue of whether or not the suspension (which was held by the Appeal Tribunal to be a detriment) and dismissal were because of protected acts carried out by the Claimant.

5. With the agreement of all parties, the Tribunal considered the Remitted Issues without the need for a further Hearing.

6. A Case Management Hearing had been held on 12 April 2022 when the parties agreed that the matter should be resolved on the basis of the evidence heard at the original Full Merits Hearing and on the basis of written submissions to be provided in accordance with Orders made that day.

7. The Judgment on Remitted Issues was sent to the parties on 27 October 2022. The unanimous conclusion of the Tribunal was that the acts of suspension and dismissal were not because of the protected acts.

8. The Claimant applied for Reconsideration of that Judgment on 10 November 2022. The Respondent replied to the Claimant's Application on 21 December 2022 and the matter was set down for Hearing on 20 July 2023.

9. We have had before us today two Bundles of documents, one prepared by the Claimant and one prepared by the Respondents, together with a file submitted by the Claimant consisting of his written submissions and an email sent to the Tribunal on 18 July 2023 with supplementary written submissions.

10. In the email of 18 July 2023, the Claimant said that he was unable to attend today's Hearing and in a separate letter he said that this was

> *"mainly because of health issues and to a lesser extent, other clash of commitment".*

11. We have considered carefully the Claimant's Application for Reconsideration, the contents of the Bundles and the Respondent's written submissions which Mr Salter added to, very briefly, today.

12. Mr Salter rightly pointed out that the ambit of today's Hearing was to determine whether it was in the interests of justice to reconsider the second Judgment. He further rightly pointed out that that determination is to be based on the facts found in this Tribunal's first Judgment.

13. The findings of fact made in the first Hearing on 15 – 18 April 2019 have not been the subject of any successful challenge.

14. Paragraph 28 of the Judgment of the Employment Appeal Tribunal states that there was no challenge to the findings of fact and no appeal on the ground of perversity.

15. In those circumstances it is not appropriate for the Claimant to now, in an Application to Reconsider the decision made in October 2022, revisit, re-argue or seek to alter the findings of fact which were made in April 2019 nor to re-argue any part thereof.

16. The purpose of Reconsideration is not to give a dissatisfied party a second bite of the cherry.

17. The Claimant's written submissions in support of his Application for Reconsideration effectively seek to do just that. We have been unable to locate in the 182 paragraphs of written submissions any basis (other than to challenge the facts already found) upon which the Claimant believes it is appropriate or necessary to reconsider the Judgment issued in October 2022.

18. The Respondent has referred us to the case of Ebury Partners Limited v Acton Davis [2023] EAT40, where in the Employment Appeal Tribunal stated that,

> "It is unusual for a litigant to be given a *"second bite at the cherry"* and the jurisdiction to reconsider should be exercised with caution. Where there has been a procedural mishap so that a party has been denied a fair and proper opportunity to put his or her case, it may be appropriate to reconsider a decision, but it should not be used to correct a supposed error after the parties have had an opportunity to put their case."

19. In that case it was held that an Employment Judge erred in granting reconsideration on the basis of arguments which the Claimant had failed to advance at the original Hearing, even though the arguments themselves raised an arguable issue.

20. Mr Salter further directed us to the case of General Council of British Shipping v Deria and Ors. [1985] ICR 198, where the Employment Appeal Tribunal stated that,

> "…the fact a Claimant could have produced more or different evidence on a point is not enough for reconsideration and the interests of justice must be seen from both sides."

21. The Claimant, for his part, sought to distinguish his claim from the Ebury Partners Judgment and referred us to Serafin v Malkiewicz [2019] EWCA Civ. 852, and the Supreme Court decision in that case [2020] UKSC23. He referred to this extract from the Judgment,

> "The Judgment which results from an unfair trial is in effect a nullity and cannot be rescued by its ostensible quality or by the fact that the Court or Tribunal accepts some of one party's arguments and rejects others; that is a fundamental tenet of the administration of the Law that all those who appear before the Court are treated fairly and the Judges act and are seen to act fairly and impartially throughout the trial; and the Judges should be especially courteous of this when dealing with litigants in person and should make due allowance for language or other difficulties which they may experience in the litigation process."

22. Whilst the Claimant identified the need to treat fairly and impartially in his reference to this case, it has never been suggested that at the original

Hearing, or at the Hearing in October 2022, the Claimant was treated anything other than fairly, nor that the Tribunal was anything other than impartial.

23. His suggestion (seeking to rely on the case of Van Orshoven v Belgium [1988] 26 EHRR 55, and Vermeulen v Belgium [2001] 32 EHRR, by reference to the right in adversarial proceedings,

> "For the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed… with a view to influencing the Court's decision"

is also something which has not previously been suggested, if the purpose of the Claimant's reference is to suggest that he did not have the opportunity to gain full knowledge of and comment on all evidence adduced or observations filed this is not accepted.

24. There was careful management during the Hearing of the Remitted Issues by allowing each side to submit written submissions and thereafter allowing them to comment on the submissions of the other. There is no suggestion at any time that this was either not with the consent of both parties, or that it placed the Claimant at any form of disadvantage whatsoever.

25. The only "injustice" to the Claimant by not allowing reconsideration, is to deny him the opportunity to re-litigate a case which was determined following a Hearing in April 2019. He advances no other argument and his lengthy submissions do not address why he believes that there are grounds for Reconsideration of the decision of 28 October 2022.

26. We have therefore concluded that the Claimant's Application is no more than an attempt to re-open matters litigated as long ago as April 2019.

27. The factual findings made at that Hearing were not the subject of an Appeal as the Appeal Tribunal made clear in its decision of 24 June 2021, which Judgment remitted the question of whether the Claimant's suspension and / or dismissal were caused by the Claimant's previous protected acts.

28. The Claimant has not, in his Application for Reconsideration, focused on the determination of that issue which was set out in the Judgment dated 27 October 2022, but rather seeks to re-open factual matters determined at the Hearing in April 2019 (and not previously challenged) and the conclusions drawn from it.

29. Finality of litigation is a cornerstone of the Court process.

30. The Claimant is clearly aggrieved by and unhappy about the outcome of these proceedings, but he cannot use an Application for Reconsideration to re-litigate the matter again.

31. There is no basis advanced by the Claimant for Reconsideration of the decision made on 27 October 2022. The Claimant is seeking, by his Application, to re-litigate the matters heard in April 2019.

32. His submission that it is necessary in the interests of justice for Reconsideration to be allowed is no more than an attempt to re-litigate a decision with which he is dissatisfied.

33. The Application is refused.

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Employment Judge M Ord

Date: 14 September 2023

Sent to the parties on:
19 September 2023

For the Tribunal Office.