



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: A Ghumman

Respondent: The Lady Eleanor Holles School

RECONSIDERATION OF JUDGMENT ON COSTS

The Claimants' application dated 14 September 2023 for reconsideration of the Judgment on Costs sent to the parties on 19 July 2022 is refused.

REASONS

1. At a Preliminary Hearing on 20 September 2021 EJ Hyams-Parish (as he then was) made a Deposit Order:

“The breach of contract claim and the claims brought pursuant to section 13 of the Equality Act 2010 have little reasonable prospects of success. The Claimant is therefore ORDERED to pay a deposit of £250 (£50 in respect of each of the five claims being pursued by the Claimant) as a condition of being permitted to continue to advance the above claims. This sum must be received not later than 21 days from the date this Order is sent to the parties.”

2. EJ Hyams-Parish explained in the Order why it was that he had reached the conclusion that the Claimant's complaints had little reasonable prospect of success. For example, he said:

“When asked why he believed he had been discriminated against on those grounds, all the Claimant was able to do was point to differences between him and others, in terms of them being a different sex, sexual orientation, race etc. Whilst he alleges religion and belief discrimination, he could not say with any certainty what the religion and beliefs were of those he sought to himself with. The Claimant had clearly given little thought to the comparators (and what that really meant) and whether he had been treated less favourably than them”

3. At the final hearing most of the first day was taken up with determining the list of issues. The Claimant had not heeded the warning and, on the whole, had not sought to show why there was “more” than differences in treatment between him and others in terms of them being a different sex, sexual orientation, race etc.
4. At the final hearing, the Tribunal decided that the Claimant, having lost his claims for substantially the reasons given in the Deposit Order had acted unreasonably in pursuing his claims (Rules 39(5)(a) and 76(1)(a)). The Tribunal considered (Rule 76(1)) whether to make the Order and decided it was appropriate to exercise discretion and order that the Claimant pay the Respondent’s costs in the sum of £6900 (including VAT), less the £250 Deposit.
5. On 2 August 2022 the Claimant wrote to the Tribunal: “I am writing to request a reconsideration hearing in relation to the costs order.”
6. On 10 August 2022 I instructed that the following be sent to the Claimant:

*“Further to your application for reconsideration dated 2 August 2022, as explained in Employment Tribunal Guidance T426, in your application you must set out why it would be in the interests of justice for a judgment to be reconsidered. Time is hereby extended so that you now have 14 days to make your written application setting out why it would be in the interests of justice for the original costs judgment to be reconsidered.
If you do not do so it will be assumed that your application is withdrawn.”*

7. However, due to an administrative error it appears that this communication was not sent out. On 31 August 2023 the above instruction was sent out with a 14 day opportunity to respond if the Claimant still wished to pursue this application. I decided that in the circumstances it was in the interests of justice to consider an application out of time.
8. On 14 September 2023 the Claimant submitted his application for reconsideration:

“At the preliminary hearing, the further and better particulars I had provided were not included in the bundle and the Judge read them

during the hearing. As a result, we did not discuss the entire claim and I was advised by the Judge to seek further legal guidance in relation to my claim.

I applied to speak to Civil Legal Advice via the official government website and my case was referred to an Equality and Employment Law Centre. To be eligible for legal aid, I was informed that my claim must have a reasonable chance of success (highlighted on page two of attachment "Client care"), this was specified as more than 51% prospects of success at a final hearing (definition from Law Insider website attached as "Reasonable prospects").

They agreed to represent me and sent an email to the tribunal confirming this on 3/5/22 at 17:22 (attachment "Email to tribunal 3.5.22), there was no reply from the tribunal and I was informed at the hearing that there was no record of the email.

I do not believe that I should have a costs order against me as I did precisely what I was advised to do at the preliminary hearing, through the official government scheme and was advised as above.

Additionally, due to the respondent's conduct (detailed in the attachment), I do not believe it was possible for a fair hearing to take place. There was no opportunity to verify the evidence provided as they refused to forward any correspondence to witnesses, I was informed that no pupils had been spoken to, in contrast to what was stated at the hearing. Specific documents that had been requested were not provided, some were ordered by the Judge on the second day of the hearing, of which some were still not provided. After the hearing, a few were accessed via another party by me, resulting in the recall of two of their witnesses to provide evidence."

9. Rule 72(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the "Rules") enable an Employment Judge to refuse an application for reconsideration if they consider that there is no reasonable prospect of the original decision being varied or revoked. The test is whether it is necessary in the interests of justice to reconsider the judgment (Rule 70).
10. Preliminary consideration under Rule 72(1) must be conducted in accordance with the overriding objective which appears in Rule 2, namely that cases should be dealt with fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just process.
11. The Claimant says *"At the preliminary hearing, the further and better particulars I had provided were not included in the bundle and the Judge read them during the hearing. As a result, we did not discuss the entire claim*

and I was advised by the Judge to seek further legal guidance in relation to my claim.

12. I reject this. The Deposit Order that was sent to the parties contained a narrative of the claims that the Claimant was advancing and the reasons why they appeared to have little reasonable prospect of success.

13. The Claimant says *"I do not believe that I should have a costs order against me as I did precisely what I was advised to do at the preliminary hearing, through the official government scheme and was advised as above."*

14. It is not correct that the only thing that was required of the Claimant was to take legal advice. The Claimant did not address the failings of the claims that he was advancing that had been set out in the Order of EJ Hyams-Parish.

15. The Claimant says:

To be eligible for legal aid, I was informed that my claim must have a reasonable chance of success (highlighted on page two of attachment "Client care"), this was specified as more than 51% prospects of success at a final hearing (definition from Law Insider website attached as "Reasonable prospects").

16. I reject that this is valid consideration. It is not for a Tribunal, in these circumstances, to look into what information was provided to legal advisers and what their advice was in relation to prospects of success. That is a matter between the Claimant and his legal advisers.

17. In relation to:

"Additionally, due to the respondent's conduct (detailed in the attachment), I do not believe it was possible for a fair hearing to take place. There was no opportunity to verify the evidence provided as they refused to forward any correspondence to witnesses, I was informed that no pupils had been spoken to, in contrast to what was stated at the hearing. Specific documents that had been requested were not provided, some were ordered by the Judge on the second day of the hearing, of which some were still not provided. After the hearing, a few were accessed via another party by me, resulting in the recall of two of their witnesses to provide evidence."

18. Both parties had been in default of Tribunal Orders and both parties provided late disclosure. Further, these matters go to liability and that Judgment could have been appealed within the time limits.

19. It is therefore not in the interests of justice for the decision to be reconsidered. There is no reasonable prospect of the original decision being varied or revoked.

**Case No: 2307190/2020
2304761/2020
2305208/2020**

Employment Judge **L Burge**

Date: **26 September 2023**

REASONS SENT TO THE PARTIES ON
Date: **29 September 2023**

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FOR EMPLOYMENT TRIBUNALS

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