



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 September 2023 for reconsideration of the reconsideration judgment sent to the parties on 13 September 2023 is refused on the grounds that there is no reasonable prospect of that judgment being varied or revoked.

REASONS

The background to this application

1. This is an application, dated 26 September 2023, for reconsideration of a judgment sent to the parties on 13 September 2023 (the September 2023 judgment). That judgment refused an application dated 26 May 2023 for reconsideration of a judgment sent to the parties on 4 May 2020 on the grounds that there was no reasonable prospect of that judgment being varied or revoked.

2. In the reasons for my September 2023 judgment, I set out the background to the application for reconsideration dated 26 May 2023.

3. The application dated 26 May 2023 was made on the basis that the claimant asserted 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 “new evidence” consisted of 4 emails all dated 2 August 2018. For reasons I explained in the September 2023 judgment, I concluded that nothing in those emails had any reasonable prospect of causing the Tribunal to vary or revoke any part of its original decision. Other arguments in the claimant’s letter of 26 May 2023 did not arise from the “new evidence” and were arguments which were either made, or could have been made, by the claimant at the substantive hearing, relying

on evidence that was before the Tribunal at that time.

This application

4. The application consists of a 7 page letter, together with copies of a number of emails dated 9 August 2018 and four covering emails dated 26 September 2023.

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 September 2023 judgment 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 September 2023 judgment being varied or revoked, the application will proceed to a reconsideration hearing.

Conclusions

7. I conclude that the claimant's application of 26 September 2023 does not undermine my reasoning as to why I considered the application for reconsideration, based on that "new evidence" had no reasonable prospect of success.

8. Much of the claimant's 26 September 2023 application relies on emails of 9 August 2018. These were not identified as "new evidence" in the reconsideration application dated 26 May 2023.

9. I do not consider it would be in the interests of justice to reconsider the September 2023 judgment on the basis of emails that were available at the substantive hearing. As I noted in paragraph 15 of the reasons for the September 2023 decision, 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.

10. The claimant's fourth email of 26 September 2023 asserts that the Tribunal had the first two pages of the email chain of 9 August 2018 during the substantive hearing but other parts of the email chain was disclosed during County Court proceedings. The claimant does not say that this disclosure was later than the disclosure of the 2 August 2018 emails relied on as "new evidence" for the 26 May 2023 reconsideration application.

11. The claimant had referred, in his application of 26 May 2023, to some emails dated 9 August 2018 under the heading of "further evidence that may be relevant to a review". He wrote that he had discovered the emails dated 9 August 2018 in 2019 as a result of a subject access request. I do not know whether this statement

applies to all the emails dated 9 August 2018. If it does, then the claimant, contrary to what he states in his email of 26 September 2023, had all the 9 August 2018 emails at the time of the substantive 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.

12. Even if some of the 9 August 2018 emails only came into his possession during disclosure in County Court proceedings, this was before he made his reconsideration application dated 26 May 2023. The claimant had an opportunity to state that certain emails of 9 August 2018 were “new evidence” and make his arguments based on these when making his application of 26 May 2023. I do not consider it would be in the interests of justice to allow the claimant to have a further “bite of the cherry” by allowing him to rely on points in this application for reconsideration of a reconsideration judgment which he could have made in the May 2023 application for reconsideration.

13. Even if I had considered it in the interests of justice to allow the claimant to make additional arguments at this stage which he could have made in his application of 26 May 2023, I would have concluded that there was no reasonable prospect of the matters raised in his application of 26 September 2023 causing me to revoke or vary my September 2023 judgment. The emails of 9 August 2023 are consistent with the Tribunal’s findings in the original judgment. They add nothing of any significance to the evidence that was before the Tribunal.

14. Even if, as alleged by the claimant, the respondent was fraudulent in not disclosing documents they should have disclosed (and I emphasise that I am not making any such finding), I have explained in previous judgments why there is no reasonable prospect that the documents the claimant says were fraudulently withheld would have made any difference to the Tribunal’s decision.

15. Nothing in the claimant’s application dated 26 September 2023 leads me to conclude that there is any reasonable prospect of me varying or revoking the September 2023 judgment. It does not undermine the reasoning I gave for that decision. I, therefore, refuse this application for reconsideration of my reconsideration judgment of September 2023.

Employment Judge Slater

Date: 1 November 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

7 November 2023

FOR THE TRIBUNAL OFFICE

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