



EMPLOYMENT TRIBUNALS

Claimant: Mr T Fingi Mlotshwa

Respondent: Cygnet NW Ltd

HELD at Sheffield

ON: 24 November 2023

BEFORE: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

1. The Judgment of the Employment Tribunal is that there is no reasonable prospect of paragraph 2.2 of the Reserved Judgment promulgated on 17 November 2023 being varied or revoked. Accordingly, the claimant's application for reconsideration of paragraph 2.2 of the Reserved Judgment is refused.

REASONS

1. The Reserved Judgment in this case was promulgated and sent to the parties on 17 November 2023. The Tribunal shall now refer to this simply as "*the Judgment*".
2. On 18 November 2023, the claimant made an application for reconsideration of paragraph 2.2 of the Judgment. This concerned the claimant's complaints of harassment related to the protected characteristic of race. This was a complaint brought by the claimant pursuant to section 26 (when read in conjunction with section 40) of the Equality Act 2010.
3. By Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied, or revoked.
4. An application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date upon which the written record (in this case that being the Judgment) was sent to the parties. It follows therefore that the claimant's application for reconsideration of the Judgment was presented in time. The claimant appears not to have copied the application into the respondent. However, if the Tribunal is wrong upon this that irregularity may in

any event be waived pursuant to Rule 6 of Schedule 1 to the 2013 Regulations. The Tribunal waives any irregularity in the claimant's reconsideration application. The Tribunal is satisfied that there is no injustice to the respondent in the Tribunal proceeding to deal with the reconsideration application on the papers.

5. Under Rule 70 of Schedule 1 to the 2013 Regulations, a judgment will only be reconsidered where it is necessary to do so in the interests of justice. This allows the Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
6. The procedure upon a reconsideration application is for the Employment Judge that heard the case (either alone or as a panel member as the case may be) to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
7. If the Employment Judge considers that there is no reasonable prospect of success, then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. Where the Employment Judge sat as part of a panel, then the reconsideration hearing will be convened in front of the panel. The Employment Judge's role therefore upon considering such an application on the papers in the first instance is to act as a filter to determine whether there is a reasonable prospect of the judgment in question being varied or revoked were the matter to go back to the full panel. The application will be refused if it can be said that there is no reasonable prospect of variation or revocation.
8. Upon a reconsideration application, the applicant should seek to set aside the actual decision or judgment. A reconsideration application will not be entertained where the sole purpose is to challenge the reasons for the decision or a particular finding of fact. In **Ameyaw v PriceWaterhouseCooper Services Limited** EA 2019 000480 the claimant having won on certain grounds applied to the Employment Tribunal to reconsider its judgment to change some of the reasoning with which she did not disagree. The Employment Appeal Tribunal held that there is no power to do so under the 2013 Regulations. A reconsideration application must be to vary or revoke the decision itself.
9. Much of the claimant's reconsideration application is concerned with seeking to correct factual findings made by the Tribunal. The Employment Judge is satisfied that these were all findings open to the Tribunal upon the basis of the evidence which was heard.
10. Crucially, however, the claimant does not say how varying the findings as he suggests would have the result that any of the nine individual complaints of harassment would then succeed.

11. Upon this basis, it can be said that there is no reasonable prospect of that part of the Judgment with which the reconsideration application is concerned being varied or revoked. Accordingly, the reconsideration application is refused.

Employment Judge Brain

Date:

24 November 2023