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EMPLOYMENT TRIBUNALS

Claimant: Mr P Hall
Respondent: Transport for London
Before: Employment Judge S Moor

JUDGMENT ON RECONSIDERATION

It is not in the interests of justice to reconsider the judgment sent to the parties on 12 May 2023.

REASONS

1. In a judgment sent to the parties on 12 May 2023, the claimant was ordered to pay to the respondent £2,940 in respect of costs because, in my judgment, he had acted unreasonably in withdrawing his claims at 17:07, the day before the hearing of 23 February 2023.
2. On 26 May 2023, in an email to the tribunal, the claimant applied to reconsider that judgment. The application was not forwarded to me and the error was only discovered when the Employment Appeal Tribunal asked for an update in relation to it on 6 November 2023. (On that date it was forwarded to me. I drafted this judgment on the first day upon which I could see the file, 21 November 2023. It was sent back from typing on 1 December 2023.)

Legal principles on reconsideration

3. Under Rule 70 of the Employment Tribunals Rules of Procedure 2013, a judgment, including one about costs, will only be reconsidered where it is necessary in the interests of justice to do so.

4. Under Rule 72 of the Tribunal Rules, if the Employment Judge considers the application has “no reasonable prospects of success”, she shall refuse the application and inform the parties, otherwise the tribunal shall send a notice setting out the timetable for response.
5. In considering the interests of justice, the tribunal must be guided by principles of natural justice and fairness and give effect to the overriding objective at Rule 2 of the Tribunal Rules, including:
 - 5.1 ensuring the parties are on an equal footing;
 - 5.2 dealing with cases in ways that are proportionate to the complexity and importance of the issues;
 - 5.3 voiding unnecessary formality and seeking flexibility;
 - 5.4 avoiding delay so far as compatible with proper consideration of the issues; and
 - 5.5 saving expense.
6. The discretion to act in the interests of justice is not open-ended: it should be exercised in a principled way. In particular, the finality of litigation is an important principle of justice. It is necessary for the efficient administration of justice, the saving of expense and time, and to be fair to those waiting for their cases to be heard. A party cannot raise a point after judgement that he could have reasonably argued earlier. Nor can he use the judgment as a starting point from which to make further arguments.
7. The principles as to when fresh evidence can be considered were set out in *Ladd v Marshall* [1954] EWCA Civ. 1 so as to balance the principle of finality against the needs of justice in the individual case. First, it must be shown that the new evidence could not have been obtained with reasonable diligence for the original hearing; second, the evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive and third, the evidence must be such as it is presumably to be believed or in other words it must be apparently credible, though it need not be incontrovertible.

Analysis

8. I shall refer to the paragraph numbers of the claimant’s application dated 26 May 2023.
9. Paragraphs 1 to 5 are background.
10. Paragraph 6: it does not seem to me on reviewing the file that any of the documents the claimant states are outstanding were relevant to the costs decision I had to make in May 2023. My reference to his correct address and the delay in making my decision, was to ensure that the application for costs had been sent to the Claimant and that he had had an opportunity to respond.

11. Paragraph 8: there is no presumption that an application for disclosure will be dealt with before a strike out application. Indeed in general a strike out decision is made on the Claimant's case at its highest not on a review of the primary documents. In any event, that application went to the issues at the hearing: the Claimant withdrew from that hearing. The costs decision is not about the withdrawal itself but the timing of it. This, therefore, is not a good reason for it to be in the interests of justice to reconsider the cost decision. In any event, it was fair for the tribunal to decide that the disclosure application would be dealt with at the planned hearing on 23 February 2023 rather than before it.
12. Paragraphs 9 and 10: I refer to the November 2022 judgment. This judgment explains in detail that the claimant's understanding that there had been investigations was incorrect. I gave the claimant no advice as alleged in paragraphs 9 and 10. In any event, the claimant withdrew his claims. He was not in relation to the actions I was considering, seeking a postponement on this ground for the alleged exceptional circumstances he sets out. These paragraphs do not therefore put forward arguments that have any prospect of success in establishing that it is in the interests of justice to reconsider the costs decision.
13. Paragraph 11: The conduct that I regarded as unreasonable was withdrawing the claim so late, at 17:07, the night before the hearing. By then counsel had been briefed and had no doubt done significant preparation and all of the solicitor's preparation will have been completed. Thus, the element of costs that I allowed had been expended by the time the Claimant withdrew and arguments about who should have attended on the morning of the tribunal are irrelevant and have no prospect of establishing it is in the interests of justice to reconsider the costs decision.
14. Paragraphs 12 and 13: These paragraphs contain information that I did not have before me at the time I made the decision, but that could reasonably have been put before me and therefore, in accordance with *Ladd vs Marshall*, it is not in the interests of justice to consider them.
15. Paragraph 15: costs were not awarded for the withdrawal, costs were awarded because I judged that the late withdrawal was unreasonable. It was only the costs incurred by that late withdrawal that were ordered. The question was not therefore the question the claimant poses at paragraph 15. The Claimant has no reasonable prospect of establishing it is in the interests of justice to reconsider the costs decision on this ground.
16. Paragraph 16: see above.
17. Paragraph 17: this was not information that the claimant had put before me and in any event, it was not relevant to whether or not his late withdrawal was unreasonable. The Claimant has no reasonable prospect of establishing it is in the interests of justice to reconsider the costs decision on this ground.
18. Paragraph 18: the question of whether or not the claimant could obtain medical evidence went to the question of his applications to postpone. The issue I was dealing with was his late withdrawal of claims, not whether or not he could be

allowed to postpone. Thus, the argument set out at paragraph 18 has no reasonable prospect of success of establishing that it is in the interests of justice to reconsider the costs decision.

19. Paragraph 19: whether or not the tribunal office refers the claims to the statutory regulator is not relevant to the issue of late withdrawal and there are no reasonable prospects of persuading the Tribunal that it should reconsider the costs award on this basis.

Conclusion

20. In my judgment, for all of those reasons the application to reconsider the judgment has no reasonable prospect of success and I refuse it.

Employment Judge S Moor

4 December 2023