



EMPLOYMENT TRIBUNALS

Claimant:

Mr G McCracken

v

Respondent:

Fugro GB Marine Limited

Heard at:

Reading

On: 31 March and 1 April 2022,
28 April 2023 and
in chambers on 26 May 2023

Before:

Employment Judge Hawksworth
Ms L Farrell
Mr A Morgan

Appearances

For the Claimant: In person

For the Respondent: Mr S Way (counsel)

JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the reserved judgment of the tribunal sent to the parties on 20 June 2023 is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

REASONS

Introduction

1. Reserved judgment and reasons in the claimant's claim against the respondent were sent to the parties on 20 June 2023. The claimant made an application for reconsideration of the judgment by email on 4 July 2023.
2. I apologise for the delay in responding to the claimant's application. As a result of an administrative oversight or error, the application was not brought to my attention until 5 December 2023.
3. I have considered the application under rule 72(1).

The rules on reconsideration

4. Rule 70 of the Employment Tribunal Rules of Procedure 2016 says:

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”

5. The principle that a judgment may only be reconsidered where reconsideration is necessary in the interests of justice reflects the public interest in the finality of litigation.

6. Rule 71 says that an application for reconsideration must be made in writing within 14 days of the date on which the original decision was sent to the parties. Rule 72 explains the process to be followed on an application for reconsideration under rule 71. It says:

“(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

“(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another

Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.”

Conclusions on the claimant’s application

7. The claimant has complied with rule 71: his application for reconsideration was made within the required 14 days of the date on which the reserved judgment and reasons was sent to the parties.
8. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I must decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. I have considered the claimant’s application with this test in mind.
9. I explain below my conclusions on the issues raised by the claimant in his application as I understand them. For the reasons explained below, I have concluded that the application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
10. Email of 4 September 2020 (referred to in paragraph 2a(i) of the claimant’s application). This was not one of the alleged protected disclosures relied on by the claimant (they were set out in paragraph 29 of the judgment). As explained in paragraph 14 of the judgment, an application to amend the claim to include this email as a protected disclosure was refused.
11. The claimant’s lack of belief that disclosures were made in the public interest (referred to in paragraph 2a(iii) of the claimant’s application). The claimant does not agree with the tribunal’s findings of fact set out in paragraphs 79-80 of the reserved judgment and reasons. These findings were made after the tribunal heard and weighed up the evidence, considered submissions by the parties, made findings of fact on the balance of probabilities, applied the law and reached conclusions. The tribunal’s findings of fact and conclusions were explained in detail in the reserved judgment and reasons. None of the claimant’s assertions about the evidence or about the tribunal’s findings of fact provide a basis for reconsideration of the judgment.
12. The NDA with Technip: (referred to in paragraph 2b of the claimant’s application). The claimant says that the evidence we heard about this showed that there were very serious issues of cover up in relation to redaction of the NDA. In paragraphs 164 and 175 of the judgment, we rejected the suggestion that there had been any cover up in relation to the

breach of the NDA. We did not find that there was any cover up in relation to the redaction of page 437.

13. The allegations of misconduct: (referred to in paragraph 2c of the claimant's application). The claimant says that there was no possible way that he could have been guilty of misconduct. As we explained in paragraph 165 of the judgment, we found that there was a genuine basis for the investigation into the claimant's conduct, and that any arguments the claimant wanted to make about whether the information he shared was confidential could have been made later in the disciplinary process if he had not resigned. The question of whether the claimant's actions amounted to misconduct was not one of the issues we had to decide. We did not find that there was any manufacturing of evidence by the respondent.

Summary

14. The reconsideration process is not an opportunity for a party to seek to reopen matters which the tribunal has determined. There must be some basis for reconsideration.
15. I have carefully considered the claimant's application and, for the reasons set out above, I have concluded that the application does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice. There is no reasonable prospect of variation or revocation of the original decision
16. The claimant's application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 5 December 2023

Reasons sent to the parties on
15 December 2023

For the Tribunal office