EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Antony Savva	**v**	**Leather Inside Out**

Heard at: London Central Employment Tribunal

On: 20th-21st June 2023 (in person)
22nd-23rd June 2023 (in Chambers)

Before: Employment Judge Gidney,
Mr Brian Furlong
Mr Paul Secher

Appearances
For the Claimant: Mr Savva (in person)
For the Respondents: Not attending

RECONSIDERATION JUDGMENT

The Claimant's application for reconsideration of the Judgment sent to the parties on 6th October 2023, originally dated 20th October 2023 but then resent in an amended form on 17th November 2023, is refused.

REASONS

1. By a Judgment with full written reasons sent to the parties on 6th October 2023 ('the Judgment') the Tribunal dismissed the Claimant's claim of detrimental treatment for making protected interest disclosures under s47B of the **ERA**. They were not well founded.

2. The Claimant's claims of automatic unfair dismissal, sex and race discrimination and harassment were dismissed by Employment Judge Beyzade by way of a reserved judgment sent to the parties on 19th April 2022. The same judgment also dismissed all claims against the 2nd Respondent, Ms Johns, 3rd Respondent Ms McKenzie and 4th Respondents, Ms Riedweg. It is of note that the Claimant's reconsideration request has added back in the 2nd-4th Respondents when there is no basis for so doing. The Judgment of Employment Judge Beyzade has not been successfully reconsidered or successfully appealed. The last remaining Respondent was a charity that had ceased trading. At the time of the hearing it was in the process of being wound up by the Charity Commission, but had not in fact been wound up. It did not attend the hearing, which proceeded in the Respondent's absence. Notwithstanding the lack of attendance by the Respondent, the Claimant was still required to prove the facts of each disclosure and detriment relied on, in accordance with their statutory definitions.

3. The Claimant initially relied on 12 disclosures. During discussions on the first day of the hearing the Claimant abandoned 4 disclosures, leaving 8 potential disclosures to be assessed by the Tribunal. The Tribunal made findings of fact on each. In applying the law to the said disclosures, as we found them to have occurred, we dismissed disclosures 3, 5, 10, 11 and 12 as not qualifying for protection offered by the **Employment Rights Act 1996** ('the **ERA**'). We upheld disclosures 6, 8 and 9. They were:

   3.1. [6] Around October/November 2019 the Claimant disclosed to Paul Vrahimis that his (Paul's) shares in the LWL had been unlawfully transferred from his ownership to Leather Inside Out without his knowledge or approval [*S*43B(1)(a) criminal offence has been committed (s1 **Theft Act 1968**)];
   3.2. [8] in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns was committing invoicing fraud to access funds illicitly and was manipulating staff members into committing criminal offences to potentially launder money via the charity [S43B(1)(a) criminal offence has been committed (s2 **Fraud Act 2006**)];
   3.3. [9] in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns asked him to assist her with a suspicious transaction that involved importing £900,000.00 from Dubai under an agreement that authorised her to

withdraw funds against the presentation of fake invoices [S43B(1)(a) criminal offence has been committed (s327 **Proceeds Crime Act 2002)**];

4. The Claimant presented two alleged acts of detriment that he asserted (i) occurred as he claimed, (ii) amounted to detrimental treatment and (iii) were caused by his qualifying disclosures. The two alleged acts of detriment were:

   4.1. attempt to mislead the Claimant by falsely claiming he was not an employee; and,
   4.2. refuse to provide the documents requested by the Claimant in two data Subject Access Requests.

5. The Tribunal, in its findings of fact, found for the Claimant that the two incidents set out above occurred and that they amounted to detrimental treatment. Thus the key issue in the case became the reason for the said treatment. Was it done on the ground that the Claimant had made his protected disclosures numbered 6, 8 and 9, pursuant to s47B(1) of the **ERA**?

6. The Tribunal found on the facts (having assessed both the documentary and oral evidence) that the Respondent considered the Claimant to be a contractor, not an employee. He and his colleagues were paid for their work on a gross basis. Accordingly the Tribunal found that the reason for asserting that the Claimant was not an employee was because that is what the Respondent believed. It did not deny the Claimant's employment status because he had made a PID.

7. The reason why the Respondent refused to comply with the Data Access request was stated by the Respondent in its refusal: the prevention / detection of crime and the apprehension or prosecution of offenders, in relation to the theft of the Respondent's computers, a fact admitted by the Claimant. As a Tribunal we did not have to determine whether that was a good reason for refusing the Data Access request, we only had to determine whether it was the reason, and we found that it was. The denial of the Data Access request was not because the Claimant had made a PID.

8. Accordingly, on what was a decision essentially reached on its facts, I consider that there is no reasonable prospect of the original decision being varied or revoked,

because, for the reasons stated above, it would not be in the interests of justice to do so.

9. The Tribunal has power to reconsider any judgement where it is necessary and in the interests of justice to do so. Rule 72 of the Employment Tribunals Rules of Procedure sets out the process for reconsideration requests. It directs that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.

10. In **Trimble v Supertravel Ltd** [1982] IRLR 451 the Employment Appeal Tribunal stated, '*If the matter has been ventilated and properly argued at the original hearing, than errors of law of that kind fall to be corrected by this Appeal Tribunal*'. The EAT emphasised that the reconsideration procedure is there so that where there has been an oversight or some procedural occurrence, such that a party cannot be said to have had a fair opportunity to present their arguments on a point of substance, they can bring the matter back to the tribunal for adjudication. An application for reconsideration under all 70 must include a weighing of the injustice to the applicant if the reconsideration is refused, and the injustice to the respondent, if it is granted, also giving weight to the public interest in the finality of litigation: **Phipps v Primary Education Services Limited** [2023] EWCA Civ 652. It is valuable to draw attention to the importance of the finality of litigation and the view that it would be unjust to give the losing party a second bite of the cherry: **Newcastle Upon Tyne City Council v Marsden** [2010] ICR 743.

11. The factors to be considered in determining whether it is in the interests of justice to reconsider a decision can still include the specific grounds identified in the 2004 Rules of Procedure, namely (i) whether decision was wrongly made as a result of an administrative error; (ii) where a party did not receive notice of the proceedings leading to the decision, (iii) where the decision was made in the absence of a party; and (iv) when evidence had become available since the conclusion of the hearing which could not have been reasonably known or foreseen at the time.

12. In considering the Claimant's reconsideration request it is clear that none of the 2024 specific factors apply or are relied on in this case. In considering the interests of justice generally the Claimant presented his own case with skill. He plainly understood all of the legal and factual issues. He put together a very extensive bundle of relevant documents and had prepared witness statements on behalf of

himself and his witnesses. Indeed, the Tribunal found that he had made qualifying disclosures and that he had suffered detrimental treatment.

13. Turning to the Claimant's specific grounds for a reconsideration, as originally drafted and as expanded upon in his Notice of Appeal to the EAT, a summary of the Claimant's grounds and my determination of whether the Tribunal's Judgment should be reconsidered are as follows:

13.1. The Claimant's objections to the Preliminary Hearing Judgment of Employment Judge Beyzade by way of a reserved judgment sent to the parties on 19th April 2022 are not relevant to the reconsideration of the final hearing.

13.2. The Claimant asserted that the Respondent was unable to challenge his evidence or present its own, and he invites the Tribunal to draw an adverse inference against the Respondent as a result. The Respondent did not attend as it was in the process of being wound up. The originally named individual Respondents did not attend as the claims against them had been dismissed. The Tribunal concluded that the Claimant had failed to establish facts from which an inference could be drawn. Explanations for the detrimental treatment had been pleaded and were clear from the papers. The Claimant admitted that his colleague had stolen the Respondent's computers so that he (the Claimant) could use them in his Data Access request, knowing them to be stolen. The request was refused on that ground.

13.3. The Claimant asserts that the basis for refusing the Data Access request was erroneous. As I have already stated, we did not have to determine whether it was a valid reason for refusal, simply whether it was the reason for the refusal, and we found that it was. It was clear that the Respondent was not going to change its position on this issue. Every Data Access request was refused for the same reason.

13.4. The Claimant himself admitted in evidence and submissions that the 'telling off' that he witnessed could not amount to false imprisonment. In any event, even if PID5 qualified, the reasons for the detrimental treatment were not because of any alleged or upheld PID.

13.5. The Claimant asserts that the Tribunal failed to apply the correct tests to determine his employment status. This is misconceived. We were not tasked with determining his employment status and/or whether the refusal on that ground was correct, we were tasked with determining why the refusal had

occurred and ruled, on the evidence, that it was because the Respondent believed the Claimant to have been self-employed.

13.6. PID12 was dismissed because the Claimant produced no evidence of it. He was unable to establish whether or what information it disclosed, or to provide any evidence upon which we could determine whether it qualified for the protection offered by s43B **ERA**.

13.7. The determination of whether PID10 qualified for protection had to be made on its facts at the time. It is not open to a Claimant to backfill information at the final hearing which was not apparent in the original disclosure. In any event, the reasons for the detriments were not because of any of the Claimant's disclosures.

14. In all of the circumstances it is my judgment that there is no reasonable prospect of the original decision being varied or revoked, because, for the reasons stated above, it would not be in the interests of justice to do so.

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Employment Judge **Gidney**

Dated this 31st December 2023

JUDGMENT SENT TO THE PARTIES ON

.....3 January 2024.....

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FOR THE TRIBUNAL OFFICE