EMPLOYMENT TRIBUNALS

Claimant: Ms. Y Hameed

Respondent: The Borough Council of Calderdale

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration of the wasted costs order is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The wasted costs judgment was sent to the parties on 5 October 2023 and written reasons were requested and sent to the parties on 6 November 2023.

2. Mr Echendu has applied for reconsideration of the judgment.

3. I have considered the contents of the application carefully.

4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

> "70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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.
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> 71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
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> 72 (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.
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> (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."

5. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a Judgment could be reviewed. The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J **in Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

6. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed party gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

> "Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before".

8. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/81** where it was stated:

> "When you boil down what is said on (the claimant's) behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, 'justice' means justice to both parties".

9. I directed that the respondent must provide a response to the application for reconsideration of the wasted costs order by 22 December 2022 and that both the respondent and Mr Echendu must indicate by 5 January 2024 whether they agreed the application could be determined without a hearing.

10. The respondent has confirmed that it is happy for the matter to be determined without a hearing and also provided a response to the application for reconsideration indicating that it is not necessary in the interests of justice to reconsider judgment and the application should be rejected.

11. Mr Echendu has not responded to the direction to indicate whether it is agreed that the application can be determined without a hearing.

12. The first ground set out in the application for a reconsideration is that the Tribunal reached its decision wrongly as a result of what is referred to as *"an administrative/factual error"*. It is stated that I considered the respondent's application for costs against the claimant's former representative on the proposition that he was the person that had instituted the claimant's claims on her behalf and had represented the claimant until the hearing on 13 April 2023. It is stated in the application for reconsideration that this is "a factual error of records or administrative narration" as the claimant's claims were not presented in December 2022 but in July 2022.

13. This was not an error. The claimant had previously presented a claim against the same respondent number 1803582/2022 but that claim had been withdrawn. This was a new claim presented on 22 December 2022. Mr Echendu was named as the claimant's representative in the new claim. He drafted the claim that was presented by or on behalf of the claimant.

14. Mr Echendu states that the only work he carried out for the claimant was to provide better details of her claims and prepare a skeleton argument for a preliminary hearing on 13 April 2023. This is not the case. He prepared the particulars of claim that were submitted by the claimant. These were lengthy and difficult to follow. Many of the allegations appeared to be outside the Employment Tribunal's jurisdiction.

15. Mr Echendu is a professional legal representative. The particulars of claim had not been seen by the claimant. She was very concerned that most of the allegations related to the claimant's disabled sister and the appointment of the claimant as a Relevant Personal Representative or Lasting Power of Attorney. In his application Mr Echendu refers to associative discrimination on grounds of the claimant's sister's race and religious affiliation – these were not claims within the particulars of claim.

16. Mr Echendu refers to the only work he carried out for the claimant was to provide better details of the claimant's claims. This is not the case, he drafted the particulars of claim without the claimant having seen them.

17. He makes reference to the respondent's counsel "conducting a course of intimidation, bullying and threatening" that the respondent would dismiss the claimant if she did not withdraw her claims. This was not mentioned at all at the Preliminary hearing by the claimant or Mr Echendu.

18. It is submitted that because I found that the claimant was happy to remain in her employment and considered that justice had happened that it could be "clearly seen" that the claimant was influenced to drop her claims because the respondent had seen the core claims as were set out in Mr Echendu's skeleton argument.

19. Mr Echendu states that the claims were withdrawn following "threatening influence from the respondent's counsel which I physically witnessed". There was no evidence of any such threatening conduct by Mr Smith. The claimant indicated that she was content with the situation and voluntarily withdrew her claims. She was accompanied by a number of friends or relations.

20. Mr Echendu refers to the decisions reached by the Tribunal being "vitiated by a fundamental error of procedural impropriety on the part of the Tribunal". He refers to rule 47 which he states obliged the Employment Judge to make enquiries that may be practical about the reason for party's absence.

21. Mr Echendu is a professional legal representative and it was reasonable to assume that he was aware of the hearing. It had previously been postponed and I consider it reasonable to conclude that Mr Echendu was aware of the hearing. He had made written representations and it appeared that he was content to rely on written submissions. I do not consider that it was reasonable to make further enquiries about the reasons for his absence.

22. Mr Echendu states that he got "a faint idea that the hearing on 2nd of August was postponed to 2nd of October" and states that, "due to multiple postponements, I had the wrong date on my diary been 4th of October 2023."

23. The notice of the wasted costs hearing listed on 2 October 2023 was sent by the Tribunal to the parties on 27 July 2023. This was a sent to Mr Echendu's email address. However, it appears that he had put the wrong date in his diary. There was no record of him attending on 4 October 2023.

24. Mr Echendu received a further reminder of the date of the hearing when he was sent the respondent's bundle of documents on 26 September 2023. In that email the respondent's solicitor stated:

> "Please find attached a bundle of documents prepared by the respondent for use at the hearing on 2 October 2023. As the hearing is in person the Respondent will attend the hearing with hard copies for use at the hearing."

25. Mr Echendu had provided written submissions prior to the wasted costs hearing. There is no indication of any further submissions he wished to provide which could influence the decision.

Mr Echendu refers to having:

> "…only acted on a legal privilege to provide details from the facts provided to him by the claimant and prepare skeleton argument for a Preliminary Hearing which was never heard it is difficult to see the conduct exhibited by Mr Echendu as unreasonable when he never had the opportunity to appear and provide legal submission on behalf of the claimant before the Tribunal that warrant such a serious sanction."

26. The position is that he had presented claims on behalf of the claimant which were outside the jurisdiction of the Tribunal and which were misconceived and an abuse of the process. The claimant was unaware of the contents of the particulars of claim. Mr Echendu referred to having drafted the particulars in his

response to the cost application and the:

> "The respondent' solicitor laughable ground of waste is that had Mr Echendu not draft the claimant's particulars of claim the standard he did, they would have instructed their in-house counsel and solicitor to represent them at the hearing... What the solicitor unfortunately is putting to the Tribunal is that the standard Mr Echendu raised the claimant's particulars put fear in them … and as a matter of fact complimentary to Mr Echendu's professional wisdom… The fear of the detailed nature of Mr Echendu' draft of the claimant's claims made them bully, intimidate and threaten the claimant that they would bring some actions against her if she did not withdraw some important part of their claims…"

27. The respondent's submissions were:

> "The unreasonable or negligent acts and/or omissions relied upon are as follows:
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> 1. It was unreasonable and/or negligent to draft and submit the 'Details & Particulars of Claims' with the content and in the format presented in that:
>   a. It included the following matters that were misconceived and an abuse of process:
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>   i. At paragraph 44(d) an allegation of direct race discrimination of a failure to provide the claimant and her family with up-to-date information regarding her sister (see paragraphs 25-27 of the Respondent's Grounds of Resistance ('GOR')).
>   ii. At paragraph 44(e) an allegation of direct race discrimination of failure to follow legal obligation in relation to the appointment of a BIA and RPR (See GOR paragraphs 28-30).
>   iii. At paragraph 44(g) an allegation of direct race discrimination refusal to address anomalies in respect of the treatment of the Claimant's sister (see GOR 32-34).
>   iv. At paragraph 44(i) an allegation of direct race discrimination about the removal of and treatment of the claimant's sister (see GOR 36-40).
>   v. At paragraphs 27 and 44(j) an allegation of direct race discrimination about placing the claimant's sister outside of the area see (GOR 42-47).
>   vi. At paragraph 33 & 44(l) an allegation of direct race discrimination alleging disregard of the claimant's concerns regarding BIA and RPR (see GOR 54-55)
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>   b. It included an allegation of "Institutionalised Racism" (appointment of RPR and refusal to return the claimant's sister to Calderdale) at paragraphs 28,32 44(k) which was misconceived and an abuse of process (see GOR 48-53)
>   .

c. It included a Direct Disability Discrimination claim at paragraphs 39,40 &44(m) which was almost ten years out of time (see GOR 56-57).

d. In respect of matters potentially within the jurisdiction of the tribunal it failed to address the relevant legal tests or identify the relevant incidents complained of.

2. The Respondent says that regardless of any instructions provided to the representative by the Claimant to present the Details & Particulars of Claims in the manner described above was unreasonable and/or negligent conduct by Mr Echendu (although at the preliminary hearing on 13 April 2023 the Claimant appeared to have little understanding of the contents of the Details & Particulars of Claims' and disassociated herself from it during the course of the hearing).

3. Failure to notify the Claimant of the need to prepare a witness statement in a timely manner. See the attached email chain in which Mr Echendu informs the Claimant on 21 March 2023 that a statement is due by 24 March 2023, despite the order from the tribunal being sent on 14 March 2023. This resulted in a witness statement not being available for use at the preliminary hearing on 13 April 2023. "

28. I accept and agree with these submissions. Mr Echendu has not provided any further response to these submissions in his application for a reconsideration.

29. Mr Echendu refers to the only work he carried out for the claimant as providing better details of claim and preparing a skeleton argument for a preliminary hearing.

30. This is not the case, Mr Echendu had drafted lengthy and detailed claims on behalf of the claimant that were difficult to follow and largely outside the jurisdiction of the Employment Tribunal. He was named as the claimant's representative on the claim form which provided his email address. At the Preliminary Hearing on 13 April 2023 it became apparent that the claimant had not previously seen the particulars of claim drafted by Mr Echendu which made allegations largely related to the treatment of her disabled sister and her family.

31.This is unreasonable and potentially negligent action by Mr Echendu. Regardless of the instructions given by the claimant, they were misconceived and an abuse of the process.

32. There is nothing raised by Mr Echendu that would provide a reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

12 January 2024