EMPLOYMENT TRIBUNALS

Claimant: Mr A Rehman
Respondent: DHL Services Ltd

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because there is no reasonable prospect of the original decision being varied or revoked and substantially the same application has already been made and refused and there are no special reasons to come to a different decision on the application.

REASONS

1. On 6 October 2023 the claimant made his first application for reconsideration of the tribunal's liability judgment. By a judgment dated 2 November 2023 I refused the claimant's application on the basis that there was no reasonable prospect of the original decision being varied or revoked. The relevant law to be applied to reconsideration applications is set out in the first reconsideration judgment. On 17 November 2023 the claimant made a further application for reconsideration.

2. The claimant has again referred to the case of P J Drakard and Sons Ltd v Wilton [1977] ICR 642 EAT. I have already explained that this appears to state that before refusing an application for what is now called reconsideration the tribunal must give an opportunity to the applying party to elaborate in writing on the grounds. The claimant has given full details of the basis of the applications in his written

documents and he has therefore had the opportunity to explain his grounds.

3. The claimant has repeated his request for an in person reconsideration hearing. The claimant has been able to fully articulate his grounds in his written applications. I have already decided that a hearing is not necessary or proportionate and observed that the relevant rules of procedure (Rule 72(1) and (2)) state that I should refuse the application if I consider there is no reasonable prospect of the original decision being varied or revoked and a hearing could then take place if the application has not been refused on that basis. I see no reason at all to change the decision I have already made on this point.

4. The claimant has clarified that he wishes to rely on the first instance decision in Crossland v Chamberlains Security 1600344/2015. I believe this is the first time the claimant has made this clear. As this was a first instance decision it would not be binding upon us. In any event I have read the judgment and considered it. It does not seem to me to add anything to the relevant legal principles applied in this claim.

5. The claimant also referred again to A v Z Ltd UKEAT/0273/18/BA, Mrs. B Baldeh v Churches Housing Association of Dudley & District Ltd UKEAT/0290/18/JOJ and Warburton v The Chief Constable of Northamptonshire Police: [2022] EAT 42. I have already considered those decisions. The claimant is just seeking to make further submissions on matters that he could have raised at the final hearing. The claimant has also referred to other case law under the headings “Direct disability case law” and “Victimisation case law”. The principles that are identified by the claimant are well known and were firmly in the mind of the tribunal when we made our decision. Reciting these principles or identifying cases

without further analysis does not amount to a ground for reconsideration.

6. The claimant has repeated his suggestion that the tribunal should identify all the alleged inconsistences on the part of the respondent which he relied upon. I have already decided that it is not necessary in the interests of justice or proportionate for the tribunal to provide a record of all the inconsistences relied upon by the claimant. I have already explained that we considered all the inconsistencies relied upon by the claimant and found that there were no significant inconsistencies in the respondent's evidence from which the tribunal could infer discrimination or victimisation. We gave an illustrative example in our reasoning. I see no reason to change my decision on this point and the claimant is just repeating an argument he has already made.

7. The claimant has repeated his point about the respondent's alleged knowledge of disability. The tribunal's approach and our decision has been set out in the liability judgment and and confirmed in the first reconsideration judgment. There is nothing to add.

8. The claimant refers to his mental health in the context of asking for the list of issues to be revisited. This was not suggested during the hearing. It cannot possibly be in the interests of justice to revisit the list of issues at this stage. It is unclear what the relevance is of the claimant's mental health to this request. This claim was extensively case managed and the issues agreed at an early stage. The claimant has not come close to establishing that there is any reasonable prospect of the list of issues being varied.

9. The claimant says this he did not withdraw his discrimination arising from disability claim. This is the first time this has been suggested. It is untrue. It was quite clear

that following EJ Dimblylow's decision on disability the claimant's claim for discrimination arising from disability as particularised in the list of issues constructed by REJ Findlay was untenable. In that context the claimant withdrew his discrimination arising from disability claim at the start of the final hearing.

10. The claimant now produces new evidence in the form of medical records and reports. I acknowledge that reconsideration of a judgment may be necessary in the interests of justice if there is new evidence that was not available to the tribunal at the time it made its judgment. Equally, it is incumbent on the party applying for reconsideration to explain why the new evidence was not produced beforehand and why it is now in the interests of justice to consider that evidence.

11. The principles to be applied in this scenario come from the case of Ladd v Marshall 1954 3 All ER 745, CA. In summary, it is necessary to show:

(i) that the evidence could not have been obtained with reasonable diligence for use at the original hearing,
(ii) that the evidence is relevant and would probably have had an important influence on the hearing; and
(iii) that the evidence is apparently credible.

12. The EAT has confirmed that the tribunal should refuse an application for reconsideration unless the new evidence is likely to have an important bearing on the result of the case (Wileman v Minilec Engineering Ltd 1988 ICR 318, EAT).

13. The EAT in Outasight VB Ltd v Brown 2015 ICR D11, EAT also held that the interests of justice may allow fresh evidence to be adduced where some additional factor or mitigating circumstance has the effect that the evidence in

question could not have been obtained with reasonable diligence at an earlier stage. This might apply where, for example, a party was 'ambushed' by the introduction of evidence at the hearing or was incorrectly refused an adjournment. However, it is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed as a result of oversight to provide all the evidence available in support of their cases at the original hearing.

14. The claimant's second application for reconsideration suggests that the final hearing bundle was not agreed and the respondent's representative refused to add the medical records. I believe this is the first time this has been suggested. The claimant does not explain why he did not raise this at the hearing. The respondent has therefore not had the opportunity to respond to this very serious allegation but, even if it is true, it does not amount to a reasonable explanation as to why the claimant did not put this evidence before the tribunal at the final hearing. If the respondent would not agree to documents being added to the bundle the claimant should obviously have raised this with the tribunal and we could have considered the evidence then.

15. The claimant has not identified any additional factor or mitigating circumstance that means that the new evidence could not have been provided at an earlier stage. The claimant was not ambushed at the hearing. In fact the claimant is now seeking to provide additional evidence to support his own case rather than respond to something that came out at the hearing. The claimant was not refused an adjournment. In fact the claimant did not apply for an adjournment or even attempt to provide this evidence at the hearing and he has not explained why not. The interests of justice do not allow fresh evidence to be adduced in these circumstances.

16. In any event the claimant has not shown that the new evidence would probably have had an important influence on the hearing or the result. There is no reasonable prospect that the tribunal would find that it was necessary in the interests of justice to consider the new evidence and there is no reasonable prospect of the original decision being varied or revoked as a result of this new evidence.

17. In light of the above I conclude that there is nothing in this second reconsideration application which gives rise to any reasonable prospect of the original decision being varied or revoked. Further, it is my view that substantially the same application has already been made and refused and there are no special reasons to come to a different decision on the application. The claimant continues to wish to reopen the discussion about the facts of the case and the legal principles to be applied which were considered during the hearing, and for the tribunal to come to different conclusions. It is, therefore, just, fair and proportionate to refuse the application.

Employment Judge Meichen

19.1.24