EMPLOYMENT TRIBUNALS

Claimant: Tyrone Bahar

Respondent: Royal Berkshire Fire Authority
(also known as Royal Berkshire Fire and Rescue Service)

JUDGMENT

The claimant's application dated **23 November 2023** for reconsideration of the judgment sent to the parties on **24 October 2023** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the following reasons:

1. Due to pressure of work, it has taken longer for me to find time to consider the claimant's application than it should do, and for that I apologise to the claimant.

2. The grounds given by the claimant in his request for reconsideration are as follows:

   "I have now been boarded (sic) and can now officially leave the prison to attend hearings and I have further evidence not submitted to the hearing"

3. The test set out in rule 70 of the Tribunal Rules is that the tribunal may reconsider a decision if it is in the interests of justice to do so. There appear to be 2 principal grounds for the claimant's wish for reconsideration:

   3.1 That he could now attend a hearing in person; and
   3.2 That he has additional evidence that was not submitted to the tribunal at the previous hearing

   Absence from the hearing

4. Under the Tribunal Rules 2004, a party's absence from the hearing could provide grounds for reconsideration. Although rule 70 of the 2013 rules refers only to reconsideration where it is in the interests of justice to do so, it was confirmed by the EAT in the case of Outasight VB Ltd v Brown 2015 ICR D11 that considering the interests of justice encompasses the previous alternative grounds set out in the 2004 rules.

5. When considering the absence of the claimant from the hearing, the tribunal must consider the reasons for the claimant's absence. A claimant cannot simply decline to attend the hearing, rely on written submissions and then apply for a review if the tribunal's decision is unfavourable. In Morris v Griffiths 1977 ICR 153, Bristow J, giving the decision of the EAT, quoted the decision of Phillips J in to Flint v Eastern Electricity Board [1975] I.C.R. 395, saying, "In the authorities which were reviewed by Phillips J., and in Phillips J.'s own judgment, stress was laid on the importance of being very careful to ensure in this jurisdiction — as, indeed, in any other — that one party should not have "two bites at the cherry" or, putting it in Latin, interest reipublicae ut sit finis litium."

6. In the case of Morris v Griffiths itself, the EAT did order a rehearing because it accepted as genuine that the respondent employer had fallen ill on the way to the tribunal and had had to return home; conversely, in the case of Lewes Associates Ltd t/a Guido's Restaurant v Little EAT 0460/08, the EAT held that an employment tribunal was unarguably correct in refusing to revoke its decision to uphold the claimant's claim in the absence of the respondent, who had told the tribunal that she was unable to attend the hearing because of a bad back. The medical evidence subsequently provided stated only that she should refrain from work for a few days, not that she was unable to attend the hearing.

7. Technical issues making it impossible for a party to attend can provide grounds for reconsideration, as was the case in Clancy v Poolside Manor Ltd ET Case No.3303358/20.

8. In the present instance:

    8.1 the claimant was aware of the hearing date and had told the tribunal, in writing, that he did not wish to attend
    8.2 he provided lengthy and detailed written submissions, that the tribunal took into account
    8.3 he did attend via CVP on the first day and made submissions, but confirmed that he did not wish to attend on the second, third or fourth day of the hearing; he could have attended had he wished to do so

9. The tribunal considers that this is a situation where the claimant did have the opportunity of attending should he so wish, and made a conscious decision not to. It is therefore not in the interests of justice for there to be a rehearing on this ground.

Evidence

10. The principles under which additional evidence can be adduced are well established. They were set out in the Court of Appeal decision of Ladd v Marshall 1954 3 All ER 745; the claimant would need to show:

    10.1 that the evidence could not have been obtained with reasonable diligence for use at the original hearing

    10.2 that the evidence is relevant and would probably have had an important influence on the hearing; and

    10.3 that the evidence is apparently credible

11. The claimant has made no attempt to explain what evidence he has that was not submitted to the hearing, why it was not submitted, why it is relevant, and/or why it is credible. In the absence of any of this information, there can be no realistic prospect of the tribunal admitting any additional evidence.

    Generally

12. The tribunal has noted in its decision that the historic allegations of race discrimination are out of time, and has refused to allow this claim to be brought out of time.

13. In reaching this decision, the tribunal noted that the claims in the ET1 was not particularised as to dates or times; although the claimant filed a length witness statement prior to the case management hearing, he did not apply to amend the claim. At the case management hearing, the claimant was ordered, by 19 August 2022, by cross referencing to the paragraphs on the Particulars of Claim, to provide full detail of the matters on which the claimant relies in the particulars of claim in support of allegations of discrimination on grounds of race or disability, including all incidents relied on and providing particulars including:

    13.1 the date and time of the act or deliberate omission complained of;

    13.2 where it took place;

    13.3 by whom;

    13.4 the names of any witnesses to the same;

    13.5 the precise words and / or actions complained of;

    13.6 where the complaint is contained in a document, please identify the relevant document and provide a copy of the same (if available);

    13.7 dates and details of courses and promotions the claimant says he was overlooked for.

14. The claimant subsequently provided 26 pages of handwritten information. This did provide some additional cross refencing with the witness statement but did not give significantly more detail in respect of dates, times and names.

15. As a result of this, as noted by the tribunal, the respondent was not properly able to address these in its evidence, compounded by the loss of its records over time. Some of the claims appeared also to have been addressed in a previous tribunal claim that was compromised.

16. Taking the above into account, there appears to be no reasonable prospect of the tribunal reaching any different decision on the exercise of its discretion not to extent time for the historic race discrimination claims.

17. As for the claims of race and disability discrimination in relation to his dismissal, and of unfair dismissal, the tribunal considered all the evidence before it, including the submissions made by the claimant, and there is no reasonable prospect of its reaching a different decision on the same evidence.

18. In Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT, Lord McDonald said of the old review provisions that they 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". The same remains true of the current rule 70 and it appears that this is what the claimant is seeking to do. For this reason, the application for reconsideration is refused.

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Employment Judge **Talbot-Ponsonby**

Date__21 March 2024_____
JUDGMENT SENT TO THE PARTIES ON

25 March 2024.....

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FOR THE TRIBUNAL OFFICE