



EMPLOYMENT TRIBUNALS

Claimant: Mr Mathios Berhane

Respondents: (1) Mr Adebowale Olujimi
(2) Mrs Olugbesoye Olujimi

RECORD OF A PRELIMINARY HEARING

Heard at: London Central Employment Tribunal in person

On: 11th December 2023

Before: Employment Judge Gidney

Appearances

For the Claimant: Mathios Berhane

For the Respondent: David Tinkler (Counsel)

RECONSIDERATION JUDGMENT

The Claimant's application dated 11th January 2024 for reconsideration of the Judgment sent to the parties on 10th January 2024 is refused.

REASONS

1. By my Judgment with full written reasons sent to the parties on 10th January 2024 ('the Judgment') I ruled on a number of issues that had been listed for determination as follows:
 - 1.1. The Claimant's automatic unfair dismissal claim is struck out.
 - 1.2. The Claimant's notice pay claim is struck out.

- 1.3. The Claimant's unlawful deduction from wages claim is struck out.
 - 1.4. The Claimant's 4 breach of contract claims are struck out.
 - 1.5. The Claimant's direct race discrimination claim shall proceed to trial.
 - 1.6. The Claimant's direct sex discrimination claim shall proceed to trial.
 - 1.7. The Claimant's claim of discrimination on the grounds of religion or belief shall proceed to trial.
2. By an application for reconsideration made in time on 11th January 2024, the Claimant has asked that I reconsider 'some aspects' of the Judgment. From the application it appears that a reconsideration is sought in respect of every decision that went against the Claimant, namely:
- 2.1. automatic unfair dismissal;
 - 2.2. notice pay;
 - 2.3. unlawful deduction of wages;
 - 2.4. the breach of contract claims.
3. 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.
4. 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 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.

5. 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.
6. I have considered the Claimant's reconsideration application. In my judgment it does not contain any basis for reconsidering the decision. The case was well put by both sides, both orally and in writing. Findings of fact were made that supported each part of the decision. The Claimant gave evidence and was subject to cross examination. There was no administrative error, and no new evidence has come to light. Full submissions were made by both sides.
7. All of the discrimination claims were allowed to proceed to trial, contrary to the Respondent's submissions and upon the proper application of the law, having considered all of the evidence.
8. 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.

Employment Judge **Gidney**

Dated this 18th March 2024

Claim No. 2208107/2022

JUDGMENT SENT TO THE PARTIES ON

2 April 2024

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FOR THE TRIBUNAL OFFICE