EMPLOYMENT TRIBUNALS

Claimant: Mr Carl Wheeler

Respondent: Association for Spinal Injury Rehabilitation and Reintegration ('Aspire')

JUDGMENT

The Claimant's applications dated 28 February 2024, 7 March 2024 for reconsideration of the judgment sent to the parties on 27 February 2024 and 6 March 2024 is refused.

REASONS

1. Reserved Judgment was sent to the parties on 27 February 2024. Employment Judge Young issued a certificate of correction in respect of the 27 February 2024 reserved judgment on 5 March 2024, the revised reserved judgment was sent to the parties on 6 March 2024. The Claimant submitted a document titled "Appeal" by email dated 28 February 2024, asking for a reconsideration, herein referred to as 28 February application. Following receipt of the reissued reserved judgment, the Claimant submitted another email to the Tribunal dated 7 March with additional grounds in respect of a request for reconsideration, herein referred to as 6 March application.

2. An application for reconsideration must be made in accordance of rule 71 of the 2013 Rules of Tribunal Procedure which says "*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."*

3. The Claimant has failed to copy his applications to the Respondent or Respondent's representative; so the Employment Tribunal wrote to the Respondent on 4 April 2024 providing them with a copy of the Claimant's application.

4. On the Respondent providing comments on the Claimant's applications on 11 April 2024, the Claimant responded to those comments by email dated

11 April 2024. Both documents were considered in respect of the Tribunal's reconsideration decision.

5. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

6. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

7. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

    a. **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

8. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

9. **"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."**

10. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

11. The majority of the points raised by the Claimant are points of appeal and are not matters that a Tribunal should consider on reconsideration as they attempt to assert there has been a misapplication of the law. Other points are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and determined. The majority of the grounds represent a "second bite at the cherry" which undermines the principle of finality. It is only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing that have the possibility of have a reasonable prospect of resulting in the decision being varied or revoked. A Tribunal will not reconsider a finding of fact just because the Claimant wishes it had

gone in his favour.

12. The aforementioned broad principle disposes of almost all the points made by the Claimant. However, there are some points he makes which should be addressed specifically. The point in the Claimant's 7 March application that the Tribunal failed to accommodate the Claimant's disability is one such point. The judgment sets out in great detail at paragraphs 8 & 11-13 of the reserved judgment what reasonable adjustments were made for the Claimant and the fact that the Claimant was asked what reasonable adjustments he required. The Claimant was specifically advised that he could have paper and pen with him to write notes when he wished. It is fair to say that reasonable adjustments were made when the Claimant did not ask for them specifically, for example in respect of difficulties the Claimant had of dates, because they were apparent to the Tribunal. It is also right to say that the Respondent is correct in their comments that the Claimant was prompted to consider the issues in the case when he said that he had finished cross examination by the Employment Tribunal. Furthermore, the Claimant's 28 February application makes reference to the Claimant being told to speak only when spoken to. It is worth pointing out that these were not the exact words used and they were not directed specifically at the Claimant. It is the case that Employment Judge Young did explain to both parties that the Tribunal would not be able to conduct the proceedings and hear what the parties have to say if the parties spoke at the same time and so on one occasion on the first day the parties were told to speak only when I asked them to at a preliminary stage in the proceedings. The Claimant was always asked if he wanted to say anything and was given an opportunity at all times to make himself heard. The Claimant had a tendency to interrupt both the Employment Judge and counsel for the Respondent and witnesses when giving evidence and asking questions so there were occasions when the Tribunal had to ask the Claimant to wait to speak when the other person had finished speaking and it was appropriate to speak. There was no bias or apparent bias in the Tribunal managing the proceedings in order that the parties be treated fairly and justly.

Conclusion

13. I have had regard to the overriding objective, to consider the case fairly and justly and I have done so in respect of the Claimant's applications. Having considered all the points made by the Claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The applications for reconsideration are refused.

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Employment Judge Young

DATE 29 April 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON 2 May 2024

FOR THE TRIBUNAL OFFICE