EMPLOYMENT TRIBUNALS

Claimant: **Mr L Barc**

Respondent: **Anglo Beef Processors UK**

HELD at Sheffield ET **ON: 28 March 2024**

BEFORE: **Employment Judge Brain**

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the Judgment dated 31 January 2004 being varied or revoked. Accordingly, the claimant's reconsideration application dated 27 February 2024 is refused.

REASONS

1. By Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied, or revoked.
2. An application for reconsideration shall be presented in writing (and copied to the other party) within 14 days of the date upon which the judgment was sent to the parties.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
4. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or

revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because they disagree with the decision.

5. If the Employment Judge considers that there is no such reasonable prospect, then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The role of the Employment Judge therefore upon considering an application for reconsideration is to act as a filter to determine whether there is a reasonable prospect of the judgment being varied or revoked were the matter to go back to the full Employment Tribunal panel.

6. In this case, at a preliminary hearing which came before Employment Judge O'Neill on 12 July 2023, the matter was listed for a final hearing before a full Employment Tribunal panel to be heard on 31 January and 1 and 2 February 2024.

7. The matter was listed to hear the claimant's complaints of:

   7.1. Direct age discrimination.

   7.2. Harassment related to age.

   7.3. Harassment related to race or nationality.

8. On 9 October 2023, the complaints of harassment related to age and harassment related to race or nationality were struck out by Employment Judge Cox. Accordingly, only the complaint of direct age discrimination remained to be decided. The case remained listed for 31 January and 1 and 2 February 2024.

9. On the morning of 31 January 2024, the respondent attended (represented by Sarah Clarke of counsel who was accompanied by Anna Youngs, her instructing solicitor). A Polish interpreter had been arranged by the Employment Tribunal service for the benefit of the claimant. However, there was no attendance by the claimant.

10. At 5:42 on the morning of 31 January 2024 the claimant wrote to the Employment Tribunal. The email read, *"I'm very sorry, but I'm not threatening anyone. I'm only fighting for compensation for the loss of my job. Depression and stress for mobbing at work and racist behaviour towards me. I want to finally end this case because it's a very stressful situation for me. I'm just fighting for what I deserve for the injustice, which was demanded of me by the Archbishop: [the Tribunal interposes here to say that "the Archbishop" is the name of the respondent produced by Google translate]. I'm asking for your understanding because of what I went through with the Archbishop. And I repeat once again, I'm not threatening anyone and I have never threatened anyone. Sovereign Barc Leszek".*

11. The Tribunal was reluctant to interpret this email (and the claimant's wish to *"finally end this case")* as an unequivocal withdrawal. Accordingly, the Tribunal made efforts to contact the claimant on the morning of the hearing. At 10:10, the Tribunal contacted the claimant. He did not answer. A message left by the Tribunal clerk asking him to contact the Tribunal.

12. The Tribunal hearing then commenced at 10:20. The Tribunal referred the respondent's counsel and solicitor to the email received that morning at 5:42.

(The claimant had not copied the respondent's solicitor into the email). It was explained that an effort had been made to contact the claimant but to no avail. The Tribunal directed that the case be adjourned until 11am and the clerk was instructed to leave another message to the effect that the case would proceed in the claimant's absence at that time if no contact was made in the meantime. Accordingly, a second message was left by the Tribunal clerk at around 10:20am to that effect.

13. There was still no word from the claimant. Accordingly, the hearing resumed.

14. The respondent presented an application for a strike out of the claimant's claim. This was made pursuant to Rules 37(1)(b) and (c) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

15. The Tribunal was satisfied, after hearing the respondent's representations, that the manner in which the proceedings had been conducted by the claimant had been unreasonable and that there had been non-compliance with Orders of the Tribunal.

16. The Tribunal was satisfied that the claimant's conduct constituted wilful, deliberate, or contumelious disobedience of the Tribunal's Orders. Accordingly, on the authority of **Blockbuster Entertainment Limited v James** [2006] IRLR 630 CA, the Tribunal held that this was an exceptional case where in light of such conduct, the Tribunal did not need to be satisfied that a fair trial was possible.

17. In the alternative, and in any case, a fair trial of the matter was not possible in the three days' trial window which had been made available for the hearing of the case. Miss Clarke drew the Tribunal to the authority of **Emuemukoro v Croma Vigilant (Scotland) Limited** [2022] ICR 327. This is authority for the proposition that if unreasonable conduct makes a fair trial during the listed trial window impossible this meets the unreasonableness test in Rule 37(1)(b) even if it would be possible, were the case to be adjourned and re-listed, to have a fair trial at a later date.

18. The Tribunal's determination was that a fair trial was not possible within the trial window. The claimant has failed to comply with all of Employment Judge O'Neill's directions. The respondent does not simply know the case to be answered.

19. Given the claimant's history of failing to comply with Tribunal's Orders (which continued notwithstanding a clear warning from Employment Judge Cox issued on 6 October 2023 as to the potential consequences of continued failure) it was proportionate to strike out the claims. The Tribunal could have no confidence in the light of the history of matters that the claimant would comply with Orders were the case not to be struck out.

20. In the alternative, the Tribunal was satisfied (after considering such information as was made available to it) that the claim should fail on the merits in any case. This is pursuant to the Tribunal's powers under Rule 47 of Schedule 1. This provides that, *"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."*

21. The Tribunal was satisfied that such enquiries as were practicable had been made. The Tribunal had left two voicemail messages on the claimant's mobile telephone which went unanswered. The claimant was plainly aware of the hearing. He had an adviser representing him when the matter was listed by Employment Judge O'Neill. He had also sent an email on the morning of the hearing about the case.

22. Upon the basis of the information before the Tribunal, we were satisfied that no *prima facie* case of direct age discrimination was raised by the claimant. The complaint of direct age discrimination was about being required to work on three production lines in comparison to older workers who were not required to undertake such a heavy workload. The evidence produced by the respondent was that the requirement to work upon the three lines was not heavier work than that upon other lines. Further, an older colleague worked on the three lines in any case and accordingly the claimant could not show any difference in treatment between himself and the age group with whom he compares himself.

23. There was also clear evidence from the respondent that the claimant was dismissed due to conduct. This was because of the dissemination of paperwork about the prospect of the respondent being fined, together with abusive, disruptive, aggressive and threatening behaviour. The respondent's case is that any member of staff of whatever age would have been dismissed for such conduct. There is no evidence that somebody of a different age or different age group would have escaped dismissal. Having seen the material before the respondent, the Tribunal concluded upon the information before it (as required by the exercise to be carried out under Rule 47) that there was clear evidence of misconduct on the claimant's part which led to his dismissal.

24. On 27 February 2024 the Tribunal received an email from the claimant. This said*, "I will be filing an appeal against the correspondence from the Labour Court on February 23rd 2024, because the Court broke all the rights that were to be broken in the original lawsuit. Using the illegal c19 Patent and therefore the case cannot proceed. Issuing a Judgment in absence that is not in accordance with the law is a violation of international law. And England is not a private farm. C19 is used for depopulation, it is a patent purchased by criminals. Whoever took this injection is his business, but the Labour Court should not use criminal regulations to cover Barc Leszek's sovereign status as a living man."*

25. The Tribunal has interpreted the claimant's email as an application for reconsideration of the Judgment. As the Judgment was sent to the parties on 13 February 2024, the claimant's application was made within the time limit prescribed by Rule 71.

26. The email was not copied to the respondent's solicitor. The Tribunal exercises its power under Rule 6 to waive that irregularity. There is no prejudice to the respondent in so doing as the Tribunal can deal with the application without the respondent's input.

27. On 4 March 2024, the claimant filed a further document with the Tribunal. This is headed *'appeal.'* This expresses disagreement with the case having been disposed of in the claimant's absence. He appears to claim that he did not know of the hearing date and time.

28. Even allowing for the claimant's language difficulties, it is frankly difficulty to understand the basis of the claimant's application for reconsideration dated 27

February 2024. The claimant is incorrect to say that it is unlawful to issue a judgment in a party's absence. Rule 47 equips the Tribunal with that power. The Tribunal is satisfied that the power was properly exercised in this case after reasonable attempts were made to contact the claimant and after considering the information available.

29. The claimant has not addressed, in his email of 27 February 2024 or letter of 4 March 2024, why he was absent from the hearing on 31 January 2024. He has not explained why he failed to respond to the two voicemail messages left by the Tribunal.

30. He was represented at the hearing of 12 July 2023 when the case was listed for 31 January and 1 and 2 February 2024. A notice of hearing was sent to his representative on 17 July 2023. The Tribunal is entitled to presume that the dates were notified to him by his representative. Further, on 10 August 2023 a copy of the case management orders made on 12 July 2023 emailed to him after his representative withdrew from the case. This set out the dates for the hearing. On 24 January 2024, the respondent's solicitor emailed the Tribunal and copied in the claimant. This email referred to the fact that the hearing was due to commence on 31 January 2024. It is difficult therefore to accept that the claimant had no knowledge of the hearing dates.

31. The claimant has not shown any basis upon which there can be said to be a reasonable prospect of revoking or varying the Tribunal's Judgment. He has not explained why it is in the interests of justice so to do against the Tribunal's findings that there was unreasonable conduct leading to a strike out, upon the basis that he conducted matters in such a way as to justify strike out regardless of whether a fair trial remains possible or alternatively why there should be a reconsideration upon the basis of the Tribunal's finding that a fair trial was not possible within the trial window and it was proportionate to strike out the claim in any case. He has not shown any basis upon which it can be said that the Tribunal's ruling on the merits of the case warrants reconsideration.

32. Accordingly, it can be said that there is no reasonable prospect of the Tribunal's Judgment being varied or revoked and the reconsideration application stands dismissed. Accordingly, there shall be no reconsideration hearing.

Employment Judge Brain

Date: 28 March 2024