



EMPLOYMENT TRIBUNALS

Claimant: Mr Richard Godfrey

Respondent: Towers Watson Ltd

PRELIMINARY HEARING

Heard at: London Central Employment Tribunal **On:** 14th February 2024

Before: Employment Judge Gidney

Appearances

For the Claimant: Mr Richard Godfrey (in person)

For the Respondent: Mr James Green (Counsel)

JUDGMENT

The Claimant's application dated 22nd April 2024 for reconsideration of the Judgment sent to the parties on 9th April 2024 is refused.

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REASONS

1. By my Judgment with full written reasons sent to the parties on 9th April 2024 ('the Judgment') I ruled on a number of issues that had been listed for determination, as follows:
 - 1.1. No Order is made on the Respondent's application to correct the Case Management Order dated 30th May 2023 following withdrawal of the application by the Respondent;
 - 1.2. The Respondent's application for an Order striking out the Claimant's claim is granted and the Claimant's claim is hereby dismissed.
 - 1.3. No Order is made on the Respondent's application for an Unless Order in light of the Judgment striking out the Claimant's claim.
 - 1.4. The Respondent's application for its legal costs caused and/or occasioned by the Claimant's failure to comply with the Tribunal's Orders is granted in the sum of £4,000.00.

2. By an application for reconsideration made in time on 22nd April 2024, the Claimant has asked that I reconsider:
 - 2.1. The Order striking out the Claimant's claim on the grounds that a fair trial (at that point listed in four weeks' time) was no longer possible; and,
 - 2.2. The Order that the Claimant pay £4,000.00 to the Respondent in respect of its costs.

3. In the Claimant's recitation of the relevant law, he correctly stated that the question was whether a fair trial was possible in the window available (**Emuemukoro v Croma Vigiland (Scotland) Ltd and Huggins & Others Data Cars Ltd** [2020] UKEAT/0014/20). The Preliminary Hearing took place on 14th February 2024. The Final Hearing was listed to start 25 days later on 11th March 2024, for 7 days. The 'window' was 25 days until the hearing was due to start, then 7 days of hearing time.

4. The principle basis for the Claimant's reconsideration is that the Respondent had omitted the Claimant's disclosure from the Preliminary Hearing bundle, however it was not necessary to consider the disclosed documents themselves in order to determine whether it was no longer possible to have a fair trial and, in event, the Claimant produced his own supplemental bundle for the preliminary hearing which was considered. He could have added all of the documents that he now asserts should have been before the Tribunal on 14th February 2004, yet he choose not to.
5. In his application for reconsideration the Claimant stated that he had presented disability discrimination claims, yet he had never withdrawn his public interest disclosure claims, and never provided any detail of them. Those claims were live at the date of the Preliminary Hearing, yet no detail had been provided and no trial of those claims could fairly have proceeded four weeks later.
6. The Claimant asserts that an extract of his impact statement had been provided on the morning of the preliminary hearing, and his medical evidence provided on 8th February. The Respondent could not fairly consider the Claimant's medical evidence on disability which had still not been provided in full for the Preliminary Hearing.
7. The Claimant had not provided a copy of his witness statement that could be read by the Respondent. There was no indication when this would happen.
8. 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.
9. 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 under all 70 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.

10. 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.
11. In considering the Claimant's reconsideration request it is clear that none of the 2024 specific factors apply or are relied on in this case. In considering the interests of justice generally the Claimant was an experienced litigant who produced an additional bundle of documents for the Tribunal. The Judgment recorded and considered the factors relied on by the Claimant that he relies on again in his application for reconsideration.
12. In all of the circumstances it is my judgment the defects in process could not fairly be remedied within the remaining trial window (of 7 days to start in 25 days). A postponement for the next available trial window would have delayed the final hearing by 11 months. Accordingly 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.

13. No viable basis for challenging the costs award or its quantification was identified by the Claimant, so there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge **Gidney**

Dated this 20th May 2024

JUDGMENT SENT TO THE PARTIES ON

30 May 2024

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FOR THE TRIBUNAL OFFICE