EMPLOYMENT TRIBUNALS

Claimant: Mr S Mahmood

Respondent: Metropolitan Police Service

Heard at: **London South Employment Tribunal (by CVP)**
On: **17 May 2024**

Before: **Employment Judge Curtis**
Mr R Singh
Ms. B Leverton

Representation
Claimant: In person
Respondent: Miss Crew (Counsel)

JUDGMENT

After considering the Claimant's application for reconsideration dated 10 November 2023, the original decision sent to the parties on 1 November 2023 is confirmed

REASONS

1. The decision and reasons were announced orally at the hearing; they are also set out in writing in this document as was agreed at the hearing.

Background

2. The Claimant's claims of race discrimination, disability discrimination and age discrimination were considered at a hearing on 26-29 September 2023. At paragraph 1 of the judgment sent to the parties on 1 November 2023, a majority of the tribunal dismissed the race discrimination claims. The Claimant seeks reconsideration of that judgment. He does not seek reconsideration of the unanimous judgment dismissing the remainder of his claims. He relies on two numbered grounds for reconsideration, as set out in his application dated 10 November 2023.

3. We have been provided with a 122 page bundle, witness statements from DS Bowers and Amanda Lewis on behalf of the Respondent, a skeleton argument from the Respondent and a witness statement from the Claimant. The Claimant told us that his witness statement is the same as the

statement provided for the liability hearing, save that it includes an extra part on page one above "Background".

4. We heard submissions from the Claimant and the Respondent. We did not hear evidence from the witnesses.

First ground for reconsideration

5. In his first ground for reconsideration the Claimant seeks to rely on new evidence, namely a document from his records held on OLEEO, the Respondent's recruitment website which is managed by a third party. The Claimant says that the record shows that he uploaded his CV with his job application.

6. The Claimant submits that with this evidence the tribunal would have been satisfied that the interviewing panel of DS Bowers and Mr Nash had a copy of the Claimant's CV at the time of the Claimant's interview, which would have shed a different light on the question "where do you come from" which was asked at the outset of the interview. In essence the Claimant suggests that with this additional evidence the tribunal would have disbelieved DS Bowers and Mr Nash when they said that the question was asked to understand the Claimant's ability to travel to execute warrants, and the tribunal would have considered that the question displayed a racist mindset.

7. The Claimant explained to us that this evidence was available to him at the time of the liability trial (September 2023). He confirmed that during the liability trial he understood that there was a dispute as to whether the interviewing panel had a copy of his CV at the time of the interview. The Claimant explained that prior to the liability hearing he had believed that he would win his case; when he received the reserved decision on 1 November 2023 he carefully considered the written reasons and then searched for additional evidence which might further support the claims he had made at the tribunal. He then produced this document.

8. The tribunal may reconsider its judgment when it is necessary in the interests of justice to do so (rule 70 ET Rules).

9. When a party seeks to persuade the tribunal to reconsider its judgment on the basis of new evidence, the test set out in *Ladd v Marshall* [1954] 3 All ER 745 applies. Whilst this is a case which was first determined in 1954, more recent cases such as *Outasight v Brown* [2015] ICR D11 have confirmed its continuing application in situations such as this.

10. The first step in the *Ladd v Marshall* test is for the Claimant to show that the evidence could not have been obtained with reasonable diligence for use at the original hearing. That is not satisfied in this case: the Claimant accepts that he could have obtained the evidence at the time of the original hearing taking place. He understood that the issue of the CV was in dispute, he had access to the document now relied upon and there is no good reason as to why he did not produce this evidence earlier.

11. The second limb of the test is that the evidence is relevant and would probably have had an important influence on the hearing. We have not determined this point in light of our finding in the first limb, but there are obvious doubts as to whether this new evidence would have had an

important influence on the hearing given the reasons the tribunal provided for its conclusion that the interview panel did not have the Claimant's CV.

12. The third limb is that the evidence is apparently credible. That is conceded by the Respondent.

13. As the Claimant does not satisfy the *Ladd v Mashall* test the usual result is that it is not in the interests of justice to reconsider the decision on the basis of that new evidence.

14. However, there is a residual discretion for cases which do not meet the *Ladd v Marshall* test, per para 50 of *Outasight v Brown*. That is the reason that the Claimant's application was not rejected on the sift under rule 72 of the ET rules.

15. The Claimant relies on three matters to try to persuade us to apply the residual discretion. They are:
    a) The Respondent is a public body
    b) There is a general importance in carefully scrutinising and determining serious allegations of discrimination
    c) The decision was a split decision rather than a unanimous decision, so the ET should be more ready to allow new evidence and/or to reconsider its decision

16. We are satisfied that none of these amount to reasons to allow the new evidence, or to reconsider the decision in the interests of justice.

17. Parties must not think that they can prosecute a case in front of the tribunal and then come back with additional evidence once they have lost, expecting the case to be reopened and re-decided.

18. The first two matters set out above apply in a significant number of cases. There is nothing special about them which means it would be in the interests of justice to reconsider the decision. Any other conclusion would significantly undermine the public interest in finality of decisions.

19. The third factor also does not assist the Claimant. We believe that the judgment of the tribunal carries equal weight regardless of whether it is a decision of the whole panel or a majority decision. The mere fact that it was from a majority rather than unanimous does not make it more open to challenge by reconsideration. We note that *Outasight v Brown* was a case which was finely balanced, and that the tribunal in that case had relied upon that as a relevant factor in allowing a reconsideration application. When the matter reached the EAT the importance of the *Ladd v Marshall* test was restated and it appears clear to us that the question of whether the decision was finely balanced ought not to have outweighed the key principles in *Ladd v Marshall*.

20. For the above reasons we do not allow the Claimant to rely on the new evidence he seeks to bring forward, and we confirm the original judgment.

Second ground for reconsideration

21. In his application for reconsideration the Claimant sought to rely on a second ground. In the sift under rule 72 it was determined that there was no reasonable prospect of the original decision being varied or revoked on that ground. As we explained to the parties, we considered that the second ground had therefore been refused on the sift under Rule 72 and we did not consider it further at this hearing.

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Employment Judge **Curtis**

____17 May 2024_____
Date