EMPLOYMENT TRIBUNALS

Claimant: Dr H Enayatollahi

Respondent: 1.Forth Engineering (Cumbria) Limited
2.Mr M Telford
3.Mr M Lewis

JUDGMENT

The claimant's application dated 13 May 2024 for reconsideration of the judgment sent to the parties on 30 April 2024 is refused. There is no reasonable prospect of his application for reconsideration leading to the original decision in the Judgment being varied or revoked.

REASONS

1. By an email dated 13 May 2024 the claimant applied for reconsideration of the Tribunal's judgment sent to the parties on 30 April 2024 ("the Judgment"). The Tribunal panel for the case was myself, Mr B Rowen and Ms B Hilllon. In the Judgment we dismissed the claimant's complaints of direct race discrimination and race-related harassment.

Relevant Law

2. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013).

3. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties or within 14 days of the date that written reasons were sent (if later). It must be copied to the other party (rule 71 of the Employment Tribunal Rules).

4. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET Rules). If not refused, the application may be considered at a hearing or, if the

judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).

5. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also to 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 (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).

6. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

> "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."

7. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the original hearing

- that the evidence is relevant and would probably have had an important influence on the hearing; and

- that the evidence is apparently credible.

The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

The claimant's reconsideration application

8. The claimant is a litigant in person. He set out his grounds for reconsideration in a 5 page document. The application was made in time. He also sent 4 pieces of supporting evidence. 3 were certificates confirming his academic qualifications and one was a letter from the University of Manchester supporting his global talent visa application on July 7, 2021. None amounted to "new evidence" meeting the **Ladd v Marshall** test.

9. Having considered the claimant's application for reconsideration and those documents, I have concluded that there are no reasonable prospects of the claimant's application succeeding. The reason for that is that the application is an attempt to reargue matters which we decided in the Judgment. The claimant puts forward an alternative view of the evidence and challenges aspects of our findings of facts. The proper way to raise such challenges is by way of an appeal rather than an application for reconsideration. To allow the application for reconsideration to proceed would be to allow the claimant to have exactly the kind of "second bite at the cherry" which the Employment Appeal Tribunal warned against in **Liddington**.

10. There are 3 points in the application which require specific comment.

11. The first relates to the claimant's challenge (para 2 of his application) to our statement in para 148 that "the secondment had ended". He argues that the secondment had not ended – rather he was on sick leave. For the avoidance of doubt, our finding on this point is set out at para 111, i.e. that "the first respondent's attitude was that the claimant was the UoM's employee and not their problem any more". In other words, regardless of the legal position, our finding was that the first respondent's view was that the claimant's placement (and his association with the first respondent) had ended on 6 July 2022.

12. The second point relates to a factual error in the judgment. The claimant in paragraph 5 of his application refers to paragraph 57 of the Judgment which says that his wife was pregnant when they relocated to Cumbria in August 2021. The claimant points out that she was not, giving birth to their daughter in October 2022. I apologise for that error. However, it relates to a background fact and did not play a part in our decision making and so is not grounds for reconsideration.

13. The third point relates to para 8 of the reconsideration application. The claimant says that para 73 of the Judgment suggests that he acknowledged trading in cryptocurrency, which he refutes. For the avoidance of doubt, para 73 is not meant to suggest that the claimant acknowledged trading in cryptocurrency at work. It records our findings that he (i) acknowledged that he traded in cryptocurrency and (ii) acknowledged keeping an eye on his trading account while at work. We accept that he did not acknowledge trading in cryptocurrency at work.

14. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of his application for reconsideration leading to the original decision in the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Employment Judge McDonald
Date: 6 June 2024

JUDGMENT SENT TO THE PARTIES ON

20 June 2024

FOR THE TRIBUNAL OFFICE