EMPLOYMENT TRIBUNALS

Claimant: Mr K E Leigh

Respondent: The Governing Body of Corpus Christie Roman Catholic High School

RECONSIDERATION JUDGMENT

The claimant's application made on 7 May 2024 and updated on 3 June 2024 for reconsideration of the Judgment sent to the parties on 23 April 2024 is refused.

REASONS

Introduction

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. The application was initially made by email of 7 May 2024, but in that email the claimant applied for more time given the difficulties caused by receiving the judgment on paper rather than electronically. An extension was granted, and an expanded version of the reconsideration application was supplied by email on 3 June 2024. That expanded version ran to 26 pages. I considered it and the attachment to the earlier version.

2. References in these reasons to paragraph numbers are references to the reasons provided with the Reserved Judgment, save for where I refer to the Grounds of Claim.

The Law

3. 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).

4. 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.

5. 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.

6. Achieving finality in litigation is part of a fair and just adjudication. Its importance 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:

> **"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."**

7. Where a party has raised arguments, or had a reasonable opportunity to raise them, it will not generally be in the interests of justice to grant them a second such opportunity. In **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"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."**

Consideration of the application

8. Many of the points made in the application for reconsideration are invitations to the Tribunal to reopen findings it made based on the evidence it heard during the final hearing, or to apply the law differently to its findings of fact. Those passages represent attempts to have a "second bite at the cherry", which is not a reason to reconsider a judgment. There is no reasonable prospect of the Tribunal reopening its conclusions on those matters simply because the claimant wishes that the outcome had been different.

9. There are other points made in the application which I have considered and which I will address as follows.

New Evidence

10. The attachment to the application is a redacted copy of notes of an interview with Claire Neville on 7 December 2022, signed by Mrs Neville as accurate on 8 December 2022.

11. I accept that the claimant did not have this information before the final hearing in this case, and I am also prepared to accept that it could not reasonably have been obtained before the ET hearing, although that has not been fully explained in the application.

12. The question, therefore, is whether this genuinely new evidence meets the second of the three conditions identified by the Court of Appeal in **Ladd v Marshall [1954] 3 All ER 745**, being whether the evidence in question would probably have had an important influence on the result of the case, although it need not be decisive.

13. The notes of interview contain a more detailed account by Mrs Neville of her telephone conversation with Miss Woods in November 2020, and further details about the issue with Mr Simpkin at his previous school. Particular emphasis is placed in the reconsideration application on the fact that having Mr Simpkin voluntarily move from his previous school to the respondent solved the situation where he was possibly facing redundancy at the previous school. It is also suggested that this statement throws further doubt on the credibility of Mr Simpkin.

14. The Tribunal heard evidence about the discussions about Mr Simpkin between Miss Woods and Mrs Neville, and then Miss Woods and Mrs Wallace. We recorded the relevant facts in paragraphs 40-41. We explained in paragraph 226 that the significant point in this case was that the claimant was aware that his wife had concerns about Mr Simpkin, and that there were reasonable grounds for the investigator, Ms Witham, to conclude that this had affected his attitude towards Mr Simpkin when he began employment. It follows that this new evidence would not have had an important influence on our decision in this case, not least because it is a record of what Mrs Neville said in interview more than a year after she was interviewed by Ms Witham (see paragraph 79) and 11 months after Ms Witham completed her investigation report. What was said by Mrs Neville in December 2022 could not have had any bearing upon whether there was reasonable cause for Ms Witham's conclusions.

15. This new evidence therefore provides no ground for reconsideration of our judgment.

Repudiatory Breach

16. In a number of passages in the reconsideration application the Tribunal is invited to look again at its decision that the conduct of the respondent fell short of being sufficiently serious, when viewed objectively, to amount to a repudiatory breach of contract. This is no basis for reconsideration and the claimant will have to appeal if he considers that the Tribunal applied the wrong legal test.

17. In a passage on page 4 of the application it is suggested that it was never the claimant's case that the allegations of Mr Simpkin were the cause of the breakdown of the relationship, but that very allegation was made in the Grounds of Claim (at paragraph 59(a) and (b) via paragraph 60). That is why the Tribunal had to deal with those matters in the issues and the conclusions.

GDPR Breaches

18. In a lengthy passage beginning on page 8 of the reconsideration application and ending on page 16 the claimant offers an analysis of the breaches of GDPR and seeks to challenge the Tribunal's conclusion that any breaches did not amount to a repudiation of his contract.

19. The primary difficulty with this is that it is material which could have been put before the Tribunal at the final hearing. In the course of oral submissions, as recorded in paragraph 135, we asked Miss Woods to summarise the case on the GDPR breaches and what she said is recorded in that paragraph. The claimant had the opportunity to advance the material on which he now seeks to rely.

20. In any event there is no reasonable prospect of the Tribunal changing its decision on this point. Seen in context any GDPR breach did not amount to a fundamental breach of the claimant's contract of employment.

Outcome

21. There is no reasonable prospect of the matters raised in the reconsideration application persuading the Tribunal to vary or revoke its judgment, and the application is refused.

Regional Employment Judge Franey
7 June 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 June 2024

FOR THE TRIBUNAL OFFICE