



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ikeji

Respondents: (1) Office for Rail and Road
(2) Mr D Wilson
(3) Mr I Prosser
(4) Mr M Farrell
(5) Ms V Rosolia

On: 17 May 2024

Before: Employment Judge B Gardiner

JUDGMENT ON RECONSIDERATION APPLICATION

The judgment of the Tribunal is that the claimant's application dated 8 May 2024 for reconsideration of the judgment sent to the parties on 1 May 2024 is refused under Rule 72(2) Employment Tribunal Rules 2013.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The various points raised by the Claimant in the reconsideration application do not raise a sufficiently arguable point that there was an error of law in the Tribunal's approach to determining the issues in the List of Issues:
 - a. This was a unanimous judgment on all issues, albeit that this was not expressly stated on the Judgment itself. If it was not a unanimous judgment, the reasons for the minority's position on those issues decided by majority would have been set out.

- b. The Tribunal considered all the material provided by the parties, including both sides' witness statements and written closing submissions. This would have been clear to the Claimant from the Tribunal's questions of him at the conclusion of the case and is confirmed by paragraphs 4 and 7 of the Judgment. It is not incumbent on a Tribunal to refer to every aspect of the evidence in its Reasons.
- c. The Tribunal considered and refused the Claimant's application for permission to record the proceedings, as is clear from paragraph 6 of the Reasons. An application for preparation time was raised orally by the Claimant on the first morning of the Final Hearing but was not developed. It was not appropriate for this to be considered at the outset of the Final Hearing before the Tribunal had started its reading. If the Claimant has a preparation time order that he wishes to advance, then this should be done now that the substantive dispute between the parties has been concluded.
- d. There is no evidential basis for plausibly arguing that there was bias or the appearance of bias. No application made at any point for me to recuse myself.
- e. The Tribunal applied the correct legal principles when deciding the Claimant's discrimination arising from disability complaint. No cogent argument has been advanced for concluding otherwise.
- f. The points made at paragraph 1(b) amount to an attempt to challenge the Tribunal's factual findings about the level of the Claimant's anxiety symptoms from 21 March 2022 onwards.
- g. The points made at paragraph 2 (Direct race discrimination) do not disclose any arguable error of law in the Tribunal's approach to its conclusions on the direct race discrimination allegations. The provisions in Section 10(2) Constitutional Reform and Governance Act 2010 do not alter the correct legal analysis when deciding whether there has been direct race discrimination.
- h. At paragraph 279 to 288, the Tribunal considered and decided whether each of the alleged protected acts relied upon by the Claimant were protected acts as a matter of law. The proceedings against MTR Crossrail and Transport for London were not argued to be protected acts, as is clear from the agreed List of Issues (see paragraph 10, page 64).
- i. The points made at paragraph 3 (Victimisation – Protected Acts) amount to attempts to challenge the Tribunal's factual findings. The reference was factually accurate, even down to the date or approximate date on which employment ended, in that the ORR terminated the Claimant's employment with immediate effect as at the probationary review meeting on 12 July 2022 (regardless of whether it was legally entitled to do so). This or the communication of the dismissal decision on 13 July 2022 was the effective date of termination.

- j. The points made at paragraph 4 (Automatic Unfair Dismissal) amount to attempts to reargue the Tribunal's factual and legal conclusions in the light of the evidence to which the Claimant refers. They do not disclose any arguable error of law. The alleged protected act at [1438] (email of 5 July 2022) was not one of the communications in the List of Issues said to be a protected act (as set out in paragraph 10 of the List of Issues). Therefore, this was not a legal issue for the Tribunal to decide.
- k. The points made at paragraph 5 (Unlawful deductions of pay) are attempts to reargue the Claimant's case in relation to unauthorised deductions of pay by reference to evidential features which the Claimant regards as significant. They do not disclose an error of law.
- l. The points made at paragraph 6 (harassment related to race) are an attempt to dispute the Tribunal's assessment that the treatment alleged to be harassment did not meet the statutory threshold required by Section 26(1)(b) and 26(4) Equality Act 2010. This is a matter for the Tribunal to determine in the light of all the evidence. It is not for the Claimant to re-argue by way of a reconsideration application.

**Employment Judge B Gardiner
Date: 17 May 2024**