EMPLOYMENT TRIBUNALS

Claimant: Mr M Bailey

Respondent: Network Plus Services Limited

JUDGMENT

The claimant's application dated 27 June 2024 for reconsideration of the judgment sent to the parties on 13 June 2024 is refused.

REASONS

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his complaint of automatic unfair dismissal relying on section 100 Employment Rights Act 1996. That application is contained in an 8 page document attached to an email dated 27 June 2024. I have received no comments on the application from the respondent. References in square brackets are references to paragraph numbers from the reasons promulgated with the judgment.

The Law

2. 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).

3. 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.

4. 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."**

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. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

6. The application relates solely to my judgment that the complaint of automatic unfair dismissal relying on section 100 Employment Rights Act 1996 is not well founded. The claimant had succeeded in his complaints of "ordinary" unfair dismissal and of failure to comply with requirements of sections 188 and 188A of the Trade Union and Labour Relations (Consolidation) Act 1992.

7. The claimant summarises his application in paragraph 2, requesting that the discretion afforded the tribunal in **Kuzel v Roach Products Ltd** [2008] IRLR 530 CA be exercised on his behalf and the judgment be reversed in his favour. Paragraph 7 of the application summarises the principles in **Kuzel**.

8. I concluded that the respondent had proved that the reason for dismissal was the potentially fair reason of redundancy [73]. I correctly applied the burden of proof, which was on the respondent, to prove the reason for dismissal.

9. None of the cases referred to in the application relate to reasons for selection for redundancy.

10. I consider the argument in paragraph 13 of the application to have no merit. **Foley v Post Office, HSBC Bank v Madden [2000] IRLR 827 CA** confirmed the approach that a tribunal is not allowed to substitute its own view of what is reasonable for that of the employer**.** This is not relevant to considering the reason for selection for redundancy. The case is not authority on the basis of which it can be reasonably argued (if this is the claimant's argument) that it was not open to me to conclude that the reason for selection for redundancy was not as advanced by the respondent.

11. Paragraph 14 of the application is incorrect: I did not find, as asserted, that the respondent deliberately hid the real reason for dismissal behind the pretext of redundancy. I concluded that redundancy was the real reason for dismissal. I distinguished between the reason for dismissal and the reason for the claimant's selection for redundancy [73].

12. I set out the reasons for my conclusion that the reason or principal reason the claimant was selected for redundancy was not for a health and safety reason in paragraphs [85] to [92]. This conclusion was based on my findings of fact, in particular paragraphs [17-19].

13. The matters set out in paragraph 15 of the application are an attempt to relitigate matters which were, or could have been, argued at the hearing. They are an attempt to have a "second bite of the cherry". This is not a proper purpose

for an application for reconsideration and I do not consider it in the interests of justice that the claimant should be given such an opportunity.

Conclusion

14. The matters raised in the application do not persuade me that there is any reasonable prospect of the original decision being varied or revoked. I refuse the application for reconsideration.

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Employment Judge Slater

Date: 8 July 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 9 July 2024

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FOR THE TRIBUNAL OFFICE