EMPLOYMENT TRIBUNALS

Claimant: **Mr J Bevis**

Respondent: **Eaton Square Schools Ltd**

DECISION

The claimant's application dated 25 March 2024 for reconsideration of the judgment sent to the parties on 12 February 2024, the reasons for which were subsequently requested and sent to the parties on 12 March 2024, is refused.

REASONS

1. By email presented to the tribunal on 25 March 2024, the claimant applied for reconsideration of the judgment sent to the parties on 12 February 2024, the reasons for which were subsequently requested and sent to the parties on 12 March 2024.

2. Under Rule 72(1) of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

3. I apologise for the late consideration of this reconsideration application. However, the reconsideration application has only recently been referred to me.

4. The reconsideration application falls into two sections.

11 November 2020 assembly (issue 8(d))

5. First, the claimant has provided what he says is an Instagram message/statement from a Mr Giovanni Grossi dated 29 February 2024, which he says was not available to him at the trial (which took place from 29 January - 7 February 2024). The message states that (contrary to the evidence of Ms Ferguson (in her witness statement) and Ms Townsend (in her witness statement and orally)) Ms Ferguson did mention the claimant's

name at the assembly of 11 November 2020 and Ms Townsend was present at that assembly (as opposed to not being actually present but being able to hear what was going on from her office nearby).

6. In his application, the claimant states that Mr Grossi approached him unexpectedly after the trial (as opposed to his having contacted Mr Grossi himself). The claimant is someone whom we have found to have lied to the tribunal and whose evidence in general we have found to have been unreliable. I am therefore sceptical about this assertion.

7. However, even if it is correct, the claimant had lots of time to prepare his case and, if he had wanted to contact Mr Grossi before the trial, there is no reason why he could not have done so. The fact that he has, therefore, chosen to submit this further evidence after the trial has been completed and after judgment was given against him is not a good ground for reconsidering the decision.

8. Secondly, all that is before me is a bare assertion in some Instagram messages. Mr Grossi has not given evidence and has not been tested on his evidence. By contrast, Ms Townsend was present at and was cross-examined at the tribunal hearing and there was a witness statement provided in relation to Ms Ferguson. There is no reasonable prospect, therefore, of the factual findings which the tribunal made in relation to who was present at the meeting and what was said being overturned.

9. There is, therefore, no reasonable prospect of this part of the original decision being varied or revoked and this part of the reconsideration application is therefore refused.

10. I should add that, even if Ms Townsend had been physically present at the meeting and even if Ms Ferguson had mentioned the claimant's name at the meeting, there is no prospect that the tribunal would have found that mentioning the claimant's name at that meeting was either an act of racial harassment or an act of victimisation because the claimant had previously brought an employment tribunal claim. The reason for the assembly was because of the very real safeguarding concerns which the respondent had and which had come about entirely because of the claimant's own behaviour. Had the claimant's name being mentioned by Ms Ferguson, it would have been for that reason and would not have been either in any way related to his race or because he previously brought a claim. This is, of course, a hypothetical matter only, as we found that Ms Ferguson did not mention his name.

"Moo Cantina" allegation (issue 8(a))

11. The second part of the claimant's application relates to the "Moo Cantina" allegation at paragraph 8(a) of the list of issues. The claimant has provided three further photographs which he says show Ms Cannell and Mrs Macmillan in each other's company at Moo Cantina. He states that "the dates clearly indicate their friendship" and the fact that they were together at social gatherings with colleagues. He states that these photographs only became known to him when Mrs Macmillan *"explored her extensive personal photo library where she came across the said photographs which she made available to me the week of the 29 February*

2024". The claimant goes on to submit that the tribunal should therefore find that the respondent did in fact breach the COT3 agreement on 6 January 2021.

12. First, Mrs Macmillan was a witness at the tribunal and is someone with whom the claimant has long since been in contact, as is evident from various findings in the reasons for our judgment. The photographs were in her possession long before the hearing and could have been produced for the hearing. It is not reasonable for the claimant and his witness to dig around and try and find further evidence after judgment has been given and then expect the judgment to be reconsidered on that basis. There is therefore no ground for reconsideration.

13. In any case, the photographs show no more than what is set out in the reasons for the judgment anyway (see paragraphs 82-83 in particular). It is accepted that Ms Cannell and Mrs Macmillan were, for a period of a few months, work colleagues and regarded each other as friends during that limited period. The photographs show that they socialised with each other and other work colleagues and visited the Moo Cantina restaurant, which is set out in paragraph 83 of the judgment. The addition of these photographs therefore has no impact upon the findings already made. There is no reasonable prospect of these findings therefore being changed.

14. Furthermore, they have no impact on the most significant finding which we made which was that Ms Cannell did not disclose details of the claimant's settlement agreement, and we refer in full to our detailed findings in relation to this at paragraph 72-89 of the reasons for our decision.

15. Furthermore, the addition of these photographs makes no difference to our finding in the alternative at paragraph 152 that, even if Ms Cannell had made those disclosures, there is no prima facie case that she did so either because the claimant had brought his previous claim or as an act of harassment of him related to his race (as opposed to the most likely explanation for such a disclosure which would simply have been inappropriate gossip).

16. As to the COT3 agreement, as there is no change to our findings of fact, there is similarly no change to our conclusion about the respondent not having breached the COT3 agreement.

17. Similarly the photographs have no impact on our finding at paragraph 151 of the reasons for our decision that, even if Ms Cannell had made the disclosures as alleged, they were not authorised by the respondent and were therefore made outside the course of her employment.

18. Finally, the production of these photographs makes no difference to our conclusion at paragraphs 169-178 that the claimant's application to amend to include the Moo Cantina relegation was refused.

19. For all these reasons, there is no reasonable prospect of the tribunal's original decision in relation to the Moo Cantina allegation being varied or revoked. This part of the application for reconsideration is therefore also refused.

Summary

20. There is therefore no reasonable prospect of the original decision being varied or revoked.

21. The application for reconsideration is therefore refused.

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Employment Judge Baty

Date 16 July 2024

SENT TO THE PARTIES ON

19 July 2024

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FOR THE TRIBUNAL OFFICE