



EMPLOYMENT TRIBUNALS

Claimant: Mr Alexander Martin Cubbin

Respondent: Age UK

Heard at: London Central Employment Tribunal

Hybrid Hearing (in person and by CVP)

Before: Employment Judge Gidney

Darian Keyms

Philip Madelin

On: 16th, 17th & 18th January 2024

28th March 2024 (Deliberation with Members)

2nd April 2024 (Judge alone)

30th April 2024 (Judgment & Remedy)

Appearances

For the Claimant: Mr Alexander Martin Cubbin

For the Respondent: Ms Joanne Twomey (Counsel)

RECONSIDERATION JUDGMENT

The Claimant's application dated 10th May 2024 for reconsideration of the Oral Judgment delivered to the parties on 30th April 2024 is refused.

REASONS

1. The Claimant accepts the finding that he was victim of age related harassment and accepts the subsequent award to be fair.
2. He seeks a reconsideration of the Judgment on three grounds:
 - 2.1. Ground 1: the panel failed to consider the Claimant's claim of Harassment against Donna Marshall that she described the Claimant's communications and convoluted and unclear and made reference to his request to be addressed formally, ie Mr Cubbin;
 - 2.2. Ground 2: the panel was wrong to dismiss the victimisation claim against Rebecca King on the grounds that she was not aware of the protected act, given that she had had in 'in depth' conversation with Trudy Boyson.
 - 2.3. Ground 3: Any breach of the Disability Confidence Scheme (DCS) is automatically a breach of the Equality Act 2010 as it involves a decision being made to the Claimant's detriment.
3. The Tribunal has power to reconsider any judgement where it is necessary and in the interests of justice to do so. Rule 72 of the Employment Tribunals Rules of Procedure sets out the process for reconsideration requests. It directs that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.
4. In **Trimble v Supertravel Ltd** [1982] IRLR 451 the Employment Appeal Tribunal stated, '*If the matter has been ventilated and properly argued at the original hearing, than errors of law of that kind fall to be corrected by this Appeal Tribunal*'. The EAT emphasised that the reconsideration procedure is there so that where there has been an oversight or some procedural occurrence, such that a party cannot be said to have had a fair opportunity to present their arguments on a point of substance, they can bring the matter back to the tribunal for adjudication. An application for. An application for reconsideration under all 70 must include a weighing of the injustice to the applicant if the reconsideration is refused, and the injustice to the respondent, if it is granted, also giving weight to the public interest in the finality of litigation: **Phipps v Primary Education Services Limited** [2023] EWCA Civ 652. It is valuable to draw attention to the importance of the finality of litigation and the view that it would be

unjust to give the losing party a second bite of the cherry: Newcastle Upon Tyne City Council v Marsden [2010] ICR 743.

5. The factors to be considered in determining whether it is in the interests of justice to reconsider a decision can still include the specific grounds identified in the 2004 Rules of Procedure, namely (i) whether decision was wrongly made as a result of an administrative error; (ii) where a party did not receive notice of the proceedings leading to the decision, (iii) where the decision was made in the absence of a party; and (iv) when evidence had become available since the conclusion of the hearing which could not have been reasonably known or foreseen at the time.

6. In considering the Claimant's reconsideration request it is clear that none of the 2024 specific factors apply or are relied on in this case. In considering the interests of justice generally the Claimant presented his case very well and was successful in part. In respect of each ground of reconsideration:
 - 6.1. The issues to be determined at the hearing were identified by EJ Goodman and agreed with the parties at the Case Management Hearing before her on 29th August 2023. At the outset of the final hearing both the Claimant and the Respondent agreed at the issues to be determined had been correctly recorded and were correct (as I noted in both the oral and written reasons). During the hearing the List of Issues was revisited and amendments to made to it by the Claimant, which were allowed. At no point was the issue that Donna Marshal described the Claimant's communications and convoluted and unclear and made reference to his request to be addressed formally, ie Mr Cubbin, ever included within the List of Issues that we were tasked to determine.
 - 6.2. Taken at its highest this is an attempt by the Claimant to ask the Tribunal to reverse a decision it made on the facts, that Rebecca King did not know that a protected act had been made when she conducted her review of the Claimant's application. That findings was made after having considered the live oral evidence of both Trudy Byson and Rebecca King. The Tribunal accepted, having considered the relevant documents, Ms King's evidence that she did not know. This is a finding of fact made by the Tribunal.
 - 6.3. A failure to follow a DCS would amount to a detriment to the Claimant, however that is simply the first part of the legal analysis. The Tribunal accepted the Respondent's evidence that it was an innocent error (either

human or IT based) on its part that the Claimant's application was missed and not considered at all. It was not assessed as to whether the Claimant met the minimum requirements for the roll until the post had been awarded to the successful candidate. The explanation provided for the failure was accepted by the Tribunal and nothing whatsoever to do with the Claimant's age or disability.

7. In all of the circumstances it is my judgment that there is no reasonable prospect of the original decision being varied or revoked, because, for the reasons stated above, it would not be in the interests of justice to do so.

Employment Judge **Gidney**

Dated this 18th July 2024

JUDGMENT SENT TO THE PARTIES ON

24 July 2024

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FOR THE TRIBUNAL OFFICE