EMPLOYMENT TRIBUNALS

Claimant: Mr. Astley
Respondent: Genome Research Ltd

DECISION ON RECONSIDERATION APPLICATION

Determined at: Bury St Edmunds Employment Tribunal (on the papers)

On: 22 August 2024
Before: Employment Judge H. Mason

DECISION

The Claimant's application for reconsideration of the judgment dated 12 December 2023 ("the Judgment") is refused. It is not necessary in the interests of justice to reconsider the Judgment; there is no reasonable prospect of it being varied or revoked under Rule 70 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

REASONS

1. The power to reconsider a judgment is given by rule 70 of the Employment Tribunals Rules of Procedure which provides: *"A Tribunal may … on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so … Rule 71 provides: Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) … and shall set out why reconsideration of the original decision is necessary.* "

2. The Employment Tribunal can therefore only reconsider a decision if it is necessary to do so "*in the interests of justice*." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "*second bite of the cherry*" and the jurisdiction to reconsider should be exercised with caution. A Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' (the overriding objective in Rule 2).

3. At a Public Preliminary Hearing (in person) on 8 December 2023 to determine whether the Claimant was at any material time a disabled person within the meaning of s6 Equality Act 2010 ("EqA"), I concluded that although the Claimant had the impairment of emotional flashbacks during the relevant period, and that the impairment was long-term, I was unable to conclude that the adverse effect on his day to day activities was substantial. The definition of "disabled" in s6 of the EqA was not met and the disability discrimination claims were struck out.

4. Full written reasons for that Judgment were sent to the parties on 18 January 2024.

5. On 31 January 2024, the Claimant wrote to the Tribunal requesting a reconsideration of that decision. He said that this was based on "*the grounds that there is evidence I did not submit, which I need to prove my poin*t". He then sets out the following grounds:
"a) I understand that it was not necessary for me to explain causes of my c-PTSD/emotional flashbacks illness to demonstrate that it is there but if I had been at liberty to do so without being in fear of being held in contempt of the Family Court then I would have said a great deal more.
b) Another relevant part which I should have included in my oral evidence is the fallout from this [sic] Respondent's email of 22-11-25 which I'm afraid provoked a very strong reaction from me- and that included some troublesome words.
I omitted an account of these events because we were first looking at the disability discrimination claim and had not yet started the sexual harassment claim. In this, I believed I was following the Directions for the hearing.
I accept that it was my responsibility to have brought forward my statement about these events, written or oral. I had a rather sparse understanding of exactly what was to be proven, and an account of the unpleasant events from 22-11-28 was not to hand while I was under oath for my statement; I forget about them when I can.
When one is prone to flashbacks, living in the present moment is a much safter way than dwelling in the past. I have become better at it in recent years, but in this case "forgetting the past" did not assist the presentation of my case.
I imagine that either of these pieces of additional evidence might have tipped the balance."

6. Regrettably, this request was not passed on to me by the Tribunal administration until today. I can only apologise to the parties for this significant delay.

7. I have not been made aware of any communications from the Respondent regarding the Claimant's reconsideration request.

8. With regard to the first ground relied on by the Claimant, as he acknowledges, I made it clear at the hearing that the causes of the flashbacks were not relevant to my decision. My focus was entirely on the wording in s6 EqA and the Guidance and the Code. Therefore I cannot envisage that there is anything further the Claimant can tell me about the causes which would change my decision.

9. With regard to the second ground, it is ambiguous but in any event the Claimant had the opportunity to deal with this in evidence, both in his witness statement and on oath. This is evidence which could have been made available for use at the hearing and if it was relevant to the issue of whether he was disabled at the relevant

time, I cannot see why he should fail to mention it because he had not yet started sexual harassment proceedings. The Claimant has not provided any medical evidence in support of his suggestion that as a result of his propensity to flashbacks, he is more inclined to live in the present than the past and that this did not assist the presentation of his case.

10. The Claimant is effectively seeking to reargue points which have already been fully considered and asking for a second hearing of these issues. It is in the public interest that there should be finality in litigation and the interests of justice apply to both sides. As the EAT decided in **Fforde v Black EAT 68/60**, the interests of justice does not mean "*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. The ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order*". This is not the case here.

11. In conclusion, I refuse the application for a reconsideration because there is no reasonable prospect of the Judgment being varied or revoked. The purpose of a reconsideration application is not to provide a hearing at which the same evidence can be rehearsed with different emphasis or further evidence adduced which was available (or could have been made available) at the time.

Employment Judge H. Mason

22 August 2024

Sent to the parties on:
22 August 2024

For the Tribunal Office: