Case Number: 6000545/2023

EMPLOYMENT TRIBUNALS

Claimant: **Martyn Sterry**

Respondent: **Newspace Containers Ltd Lydney**

JUDGMENT

The Claimant's application dated **2 July 2024** for reconsideration of the judgment sent to the parties on **18 June 2024** is refused.

REASONS

1. I have undertaken preliminary consideration of the Claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in an email of 18 June 2024 which attached a five page Reconsideration Appel Letter, an AGP Report, a One Month of Glucose Readings document, a GP Record and a Converted Glucose Readings (UK Standard) document.

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. The importance of finality in litigation was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly 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."**

6. 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

7. Many of the points raised by the Claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. That broad principle disposes of many of the points made by the Claimant. However, there are some points he makes which should be addressed specifically and for completeness I record as follows (the headings in bold and numbered 1-4 are those used in the Claimant's Reconsideration Appeal Letter):

8.1 **1. Consideration of Medical Evidence** – the new medical evidence submitted is either not contemporaneous with the events in question and/or is evidence that could have been obtained with reasonable diligence for use at the original hearing (***Ladd v Marshall 1954 3 All ER 745, CA***). The public policy principle that there should be finality in litigation is not overridden and it is also not otherwise in the interests of justice to reconsider the judgment on the basis of this evidence.

8.2 2. Failure to Make Reasonable Adjustments:

8.2.1 As is reflected in the judgment we took account of the Workplace Wellbeing Management Report (which was at pages 268 to 269 of the bundle).

8.2.2 As referenced above, the Blood Glucose Monitor Readings are not from the period in question and this is evidence that could have

been obtained with reasonable diligence for use at the original hearing. The public policy principle that there should be finality in litigation is not overridden and it is also not otherwise in the interests of justice to reconsider the judgment on the basis of this evidence.

8.3 3. Assessment of Disability Discrimination:

8.3.1 We gave consideration to **Mr P Dytkowski v Brand PB Ltd (2402856/2019)** (paragraph 83 of the judgment) but concluded that it was a decision based on materially different facts.

8.3.2 The other cases referred to could have been obtained with reasonable diligence for use at the original hearing. The public policy principle that there should be finality in litigation is not overridden and it is also not otherwise in the interests of justice to reconsider the judgment on the basis of this aspect of the Claimant's application.

8.3.3 If we have made any error of law then that is a matter for any appeal to the Employment Appeals Tribunal.

8.4 4. Mental Health Considerations (and other matters raised under that heading):

8.4.1 I refer the Claimant in particular to paragraphs 61-62, 65-66, 68-69 and to 160 to 172 of the judgment.

8.4.2 The Claimant makes no submissions which he did not raise at the hearing of his claim and which could not have been made with reasonable diligence at the original hearing. The public policy principle that there should be finality in litigation is not overridden and it is also not otherwise in the interests of justice to reconsider the judgment on the basis of these submissions.

8.4.3 The Claimant further submits no new evidence (to the extent that it is evidence) which could not have been obtained with reasonable diligence for use at the original hearing. Again the public policy principle that there should be finality in litigation is not overridden and further it is also not otherwise in the interests of justice to reconsider the judgment on the basis of this evidence.

8.4.4 To the extent that the Claimant asserts that we have made an error of law, it is not clear from the application but, in any event, that would more properly be determined via an appeal to the Employment Appeals Tribunal.

Conclusion

9. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Case Number: 6000545/2023

Employment Judge Woodhead
Date: 5.09.2024

JUDGMENT SENT TO THE PARTIES ON
20 September 2024 By Mr J McCormick
FOR THE TRIBUNAL OFFICE