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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000037/2024

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Hearing
held on the Cloud Video Platform
on 12 September 2024

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Employment Judge A Jones

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Dr O Dada

**Claimant
In person**

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Right There

**Represented by
Mr Gale, solicitor**

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JUDGMENT

The claimant's application for reconsideration of the Tribunal's judgment of 2 July 2024 is refused. The claimant's application for the reconsideration hearing to be reconvened is also refused.

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Background

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1. In a judgment dated 2 July 2024, the Tribunal determined that it did not have jurisdiction to consider the claimant's claim of wrongful dismissal and that his claim of race discrimination should be struck out as having no reasonable prospect of success.

2. The claimant made an application for reconsideration of that judgment on 17 July. In his application the claimant made reference to newly discovered documentation, being a PVG disclosure certificate and a SSSC Registration certificate which he said were relevant to the issue of the claimant's employment status. In addition the claimant made reference to a letter from the SSSC dated 10 July following an investigation into the incident which the respondent had said had led to the claimant's dismissal. It appeared that the claimant was suggesting that this new information was relevant to the issue of whether his claim of race discrimination had any prospects of success.
3. The claimant's application was not refused on initial consideration. However the following provisional view was expressed "The EJ's provisional view on the issue of the claimant's claim for wrongful dismissal is that the information provided is unlikely to result in a consideration of the decision that the Tribunal has no jurisdiction to consider his claim of wrongful dismissal. However, the information now provided in relation to the claimant's claim of race discrimination may be relevant to whether the claimant has any prospects of success in relation to that claim."
4. The respondent objected to the application in an email of 23 July.
5. The matter was listed for a hearing which took place on the Cloud Video Platform. The claimant continues to represent himself and the respondent was represented by Mr Gale, solicitor. Unfortunately the bundle of documents that had been lodged for the purpose of this hearing was not made available to me in advance of the hearing. I subsequently reviewed the documentation which had been provided by Mr Gale as I was particularly interested in the correspondence from the SSSC in relation to the investigation which had been conducted. Having reviewed the documentation, it transpired that the report from the SSSC was in no more detail than the original letter which had been provided by the claimant with his application and which I had before me during the course of the hearing.
6. Prior to issuing this judgment, the claimant sent an email on 13 September making a request that the reconsideration hearing be reconvened. He indicated that while he had agreed to the hearing being conducted by CVP

he had “expressed some reservations about the possibility of technical issues before and during a virtual hearing.” He also made reference to the fact that the bundle of documents which had been lodged in advance of the hearing was not available to me during the hearing. He suggested that this had “a devastating impact on my representations to the Tribunal as I was unable to demonstrate the evidence to support my arguments despite repeated demands from the Employment Judge during the hearing.”

Reconsideration application

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7. I indicated to parties at the commencement of the hearing that as previously advised, I was of the view that there was no basis on which the issue of the claimant’s employment’s status should be reviewed. I noted that the claimant had submitted an appeal to the Employment Appeal Tribunal in that regard and expressed the view that it was for the Employment Appeal Tribunal to determine whether an error in law had been made on the issue of the claimant’s employment status and the documentation provided by the claimant in his application for reconsideration had no bearing on the original decision which had been made. I was of the view that the claimant’s application in this regard was no more than an attempt to relitigate the issues which had already been determined.
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8. I therefore indicated that parties should address me on the extent to which the outcome of the SSSC investigation could be relevant to the decision on whether the decision the claimant’s claim of race discrimination had no prospects of success.
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9. Despite reminding the claimant at least half a dozen times that this was the issue for discussion, the claimant continued to attempt to revisit the submissions he made at the original hearing. I continued to explain to the claimant that this was no of assistance to him and that I wanted to hear what he had to say regarding the SSSC investigation and outcome. Despite a number of attempts to focus the claimant on this issue, the claimant simply continued to repeat that there had been a conspiracy against him and that the respondent was not entitled to dismiss him. I sought again to
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explain to the claimant that the issue was whether he had been subjected to race discrimination and that my previous view had been he had not offered to prove any fact from which an inference of discrimination could be drawn such that the burden of proof might pass to the respondent. I emphasised that I was inviting him to comment on the extent to which the new information received after the hearing might have changed my view had it been available at the time.

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10. Unfortunately, the claimant's submissions did not address this point. Rather the claimant continued to repeat the same submissions which had been made at the original hearing.

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11. The respondent's position was that processes and procedures of the SSSC were entirely different in substance and nature from those of an employer. The test for misconduct which might impact a person's fitness to practice in relation to the SSSC was set out in case law to which I was referred **Roylance v GMC 1999 UKPC 16** which indicates that misconduct must be serious and relate to the relevant profession in order to amount to misconduct which might impact upon a person's fitness to practice. The respondent indicated that the considerations of the SSSC were very different from that of an employer, that any action taken by the SSSC would have a serious impact on a person's ability to practice in the care sector and that there was nothing in the decision of the SSSC which would suggest that the claimant had been subjected to race discrimination.

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12. The respondent went on to argue that despite various opportunities, the claimant had not put forward any facts he offered to prove which might indicate that his treatment was in any way related to his race.

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13. I then invited the claimant to respond to the points made by the respondent., Unfortunately rather than making submissions on matters which were relevant to the issue to be determined, the claimant continued to repeat his earlier submissions regarding there having been a conspiracy against him and that there was insufficient evidence to justify his dismissal. He did not address the points made by the respondent at all.

14. While in this regard I was mindful that the claimant is unrepresented, nonetheless he is an educated and intelligent individual who was able to

write detailed and extensive correspondence making reference to legal authorities and provisions.

Discussion and decision

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Reconsideration

15. I formed the view that there was no basis for a reconsideration of the issue of the claimant's employment status. The 'new' documentation to which the claimant referred were documents which would have been available at the original hearing and in any event did not appear to be in any way relevant to the issue of the claimant's employment status. It was not in the interests of justice to review this decision.

16. In terms of the claimant's claim of race discrimination, I was mindful that it is very difficult for claimants to identify evidence on which they might wish to rely to persuade a tribunal that they have been discriminated against. The difficulty with the claimant's pleaded case had been that despite various opportunities having been given to him to clarify **why** it was the claimant said that he had been discriminated against because of his race, he had failed to put forward any evidence or basis for his claim or explain in any way why how he would go about demonstrating that his treatment was related to his race. He simply kept repeating that a white person would not have been treated in the same manner, without making reference to any facts which might support that proposition.

17. I was therefore conscious that an investigation conducted by an external body might have made findings on which the claimant could rely as adminicles of evidence in that regard. I therefore wished to give the claimant the opportunity to explain in what way he might rely on this investigation or outcome. The claimant failed to make any submissions in this regard.

Moreover, the respondent's position which was supported by case law, was that the term 'misconduct' in the particular circumstances of the consideration of the SSSC was different in nature to that of misconduct in for instance an unfair dismissal claim. I accepted the respondent's

submissions that the claimant was conflating a claim of unfair dismissal (which he was not pursuing) with that of a claim of race discrimination. It appeared to me that the claimant was seeking to argue that the respondent had not been entitled to dismiss him, but sought to frame that in the context of a race discrimination claim, without any evidential basis for so doing.

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18. Despite the claimant's failure to address me directly on the point, I did nonetheless consider whether the claimant might be able to rely on the SSSC decision to support his claim. The decision was nothing more than a confirmation that the test for misconduct had not been met on the basis of the information provided to the SSSC. The claimant's claim is not he was unfairly dismissed but that a person who was white would not have been dismissed in similar circumstances. I came to the view that there was nothing in the conclusion of the SSSC which might provide support to the claimant's argument. I was therefore of the view that there was no basis on which the decision that the claimant's claim of race discrimination had no reasonable prospects of success should be reconsidered.

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Application to reconvene the hearing

19. The basis for the claimant seeking the hearing to be reconvened appeared to be that he was of the view he was disadvantaged in making his submissions because I did not have the bundle of documents in front of me. However, I did have the documents which he had provided with his application for reconsideration. It was these documents which were relevant to the application, not the previous bundle used at the original hearing. I had at one point assumed that there was more to the SSSC report than had been provided to me, but that proved not to be a correct assumption. While the claimant did make some reference in passing to other documents, I had to remind him that the reconsideration hearing was not an opportunity to revisit what had been said previously at the original hearing but for me to determine whether the information which was now available might have resulted in a different decision. I was therefore not satisfied that the claimant was in any way disadvantaged in making his submissions. Rather it appeared to me that the claimant was determined to make the submissions he had

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5 drafted in advance irrespective of my directions as to the issue for
discussion in the course of the hearing as he continued to revert to what
had been said at the original despite my efforts to focus his attention on the
application for reconsideration. The claimant appeared to view the
reconsideration as an opportunity have a second bite at the cherry of
establishing his case. That was not the purpose of the hearing.
20. Therefore the claimant's application for the hearing to be reconvened is also
refused.

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Employment Judge: A Jones
Date of Judgment: 13 September 2024
Entered in register: 13 September 2024
and copied to parties