



EMPLOYMENT TRIBUNALS

Claimant: Mr S Raquib

Respondent: Lewis & Tucker Chartered Surveyors

JUDGMENT

The claimant's application dated 15 July 2024 for reconsideration of the judgment sent to the parties on 3 July 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 a 11 page document attached to an email dated 17 July 2024.

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 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. The application for reconsideration is made on the following Grounds:
 - (i) New Evidence coming to light in the form of an email dated 20 April 2022;
 - (ii) procedural breaches, including inaccurate findings of fact;
 - (iii) An error in law, none being specified; and
 - (iv) general challenge against the Tribunal's findings of fact and conclusions.

8. In relation to ground (i), the new evidence that the claimant refers to is an email chain dated 20 April 2022 between Mr Gideon Davies and Mr Reece Hickey. The claimant admits that these emails were in his possession but that they were "lost amongst the overwhelming documents". It is clear that that these emails were available to the claimant and could have reasonably been put forward at the final hearing. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, this goes directly against the principle of finality in litigation.

9. With regard to ground (ii), the main point the claimant refers to here is an error the Tribunal made in a general finding of fact when delivering its oral judgment. The Tribunal incorrectly referred to a previous employee of the respondent, Mr Ishmael Lartey as a white jewish male rather than a black, Christian male, which is now confirmed. The Tribunal accepts that this was an incorrect finding of fact and corrected this by omitting this fact in its written reasons, there is nothing untoward or irregular by this. Ultimately, the incorrect finding of fact made no material difference to the Tribunal's findings and conclusions in respect of the claimant's individual pleaded complaints, which were separate stand-alone conclusions.

10. In relation to ground (iii), the claimant has not identified any error in law. In any event, even if he had identified such an error, this would be a matter for appeal and not reconsideration.

12. The remaining and in fact the majority of points in the lengthy reconsideration application 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, I find there is neither in this case. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

Conclusion

13. 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 and I find there was no procedural unfairness or irregularity. The application for reconsideration is hereby refused.

Employment Judge Akhtar

DATE: 11 October 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 October 2024

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FOR THE TRIBUNAL OFFICE