EMPLOYMENT TRIBUNALS

Claimant: Mr C Dhami

Respondent: GS Associates (Scotland) Limited

JUDGMENT

The claimant's application dated 22 August 2024 for reconsideration of the judgment sent to the parties on 8 August 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 11 page document attached to an email dated 22 August 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 appears to be made on the following Grounds, namely:
(a) a procedural error by the Tribunal in failing to take into account the Case Management Order of Employment Judge Hughes dated 23 January 2024;
(b) that there is new evidence, primarily, in the form of payslips and an email to payroll;
(c) the Tribunal made an error in law
(d) the judgment was perverse;

8. In relation to point (a), the sole issue before me at the final merits hearing was to consider whether or not the Claimant had been unfairly dismissed. Both parties confirmed their agreement at the start of the hearing that this was the only issue before me. To determine that issue, it was incumbent upon me to decide in the first instance whether or not the Claimant had been dismissed, before the moving on to consider reasons for dismissal and fairness.

9. The Claimant asserts that Employment Judge Hughes had already made determinations in respect of the issue of whether the Claimant was employed under multiple or single contracts of employment. I accept that Employment Judge Hughes does express an opinion on the likelihood of success of both the Claimant's and Respondent's respective strike out applications, however, she makes it clear that she has not heard the evidence or submissions, and in fairness to Employment Judge Hughes the matter was listed before her only for case management purposes.

10. As I set out earlier, the matter came before me to determine liability and remedy at a final merits hearing. I considered all of the evidence and submissions from the parties and made a finding of fact that the Claimant was only employed by the Respondent under one contract of employment, I concluded that he had not been dismissed.

11. In respect of point (b) and new evidence, the Claimant had every opportunity to put this evidence forward at the hearing. Reconsideration is not a right or opportunity to remake the arguments that have been made, or could have been made, at the original hearing.

12. With regard to point (c) , there must be finality in judgement. If the claimant considers that the law has been wrongly stated or wrongly applied his recourse is an appeal to the Employment Appeal Tribunal.

13. The Claimant objects to me expressing that even if I was wrong about my conclusion, I would have found dismissal to have been fair. With respect to the Claimant, this is common parlance in court and Tribunal judgments, particularly where alternative legal arguments have been put forward as in the present case. Having heard all of the evidence, I considered it only fair to the parties to express my conclusions on the issue of fairness had I found the Claimant to have been dismissed. Ultimately, I wanted to convey that my decision would still be the same, in that the Claimant was not unfairly dismissed.

13. The remaining 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 of 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.

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 therefore refused.

Employment Judge Akhtar

DATE: 17 November 2024