EMPLOYMENT TRIBUNALS

Claimant: Mr Monks

Respondent: Peter J Douglas Engineering Limited

JUDGMENT

The claimant's application dated 26 June 2024 for reconsideration of the judgment sent to the parties on 13 June 2024 is refused.

REASONS

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. *That application is contained in a 4-page document attached to an email dated 26 June 2024.* I will refer to it in this judgment as the Reconsideration Application. I have also considered comments from the respondent dated 4 December 2024. References in square brackets (e.g. [25]) are references to paragraph numbers from the reasons promulgated with the judgment.

Previous decision

2. On 17th September 2024 I decided to refuse the claimant's Reconsideration Application because I believed it had been made on 13th September 2024, more than 14 days after the decision had been sent to the parties ("the 17 September 2024 Decision").

3. On 4th December 2024 the respondent's representative drew to the Tribunal's attention that the Reconsideration Application had been made within 14 days of the decision sent to the parties. As I set out in paragraph 1 above, the decision was sent to the parties on 13th June 2024 and the Reconsideration Application was made on 26th June 2024.

4. I have therefore revoked the 17 September 2024 Decision because the Reconsideration Application was made within 14 days of the decision being sent to the parties.

5. There has been a delay in undertaking a preliminary consideration of the Reconsideration Application as until 4 December 2024 I considered that it had been refused for the reasons set out in paragraph 2. I apologise to the claimant for this delay.

The Law

6. 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).

7. Rule 71 provides:

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> 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) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

8. 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.

9. 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."**

10. 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."**

11. 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

12. Most 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.

13. That broad principle disposes of almost all the points made by the claimant. However, there are some points he makes which should be addressed specifically.

14. Part of the claimant's request for reconsideration appears to relate to a failed application from the claimant to apply for witness orders for Mr Kevin Whitfield and Mr Steve Atkinson and a complaint about the contents of the respondent's amended grounds of resistance. The claimant does not say when a written record of a decision by the Tribunal to refuse an application for a witness order was made or indeed when the Tribunal made a decision in connection with the respondent's amended grounds of resistance. I have no record of dealing with an application for a witness order or an application relating to the amended grounds of resistance at the final hearing. This application therefore appears on its face to be out of time.

15. The claimant alleges that I was biased towards the respondent. One of the claimant's complaints relates to the way the first day of the trial was conducted by me. The claimant does not provide a cogent reason as to why the first day of the hearing demonstrated bias towards the respondent. In paragraph [6] I record that the first day of the hearing was spent *"locating and sharing the bundle of documents and witness statements with the parties due to incorrect versions of documents and statements being uploaded to the tribunal's document upload centre"*, with the remaining time spent on "*defining and confirming the issues in dispute between the parties*". It is unclear on what evidential basis the claimant now suggests this in fact represented *"An audience with"* Roger Quickfall. However, the respondent had uploaded incorrect versions of documents and statement and so naturally the focus on the first part of the discussion was with Roger Quickfall, counsel for the respondent. By contrast, in defining and confirming the issues in dispute, the focus on the second part of the discussion on the first day was with the claimant. This was an unexceptional approach to discussing preliminary matters at the outset of a trial. If the claimant considers that this amounts to evidence of bias he will need to pursue that allegation by way of an appeal.

16. Finally, the claimant says that *he is not remotely satisfied no conflict of interest existed throughout Judge Childe's handling of my case*, due to me

previously having worked for Gateley Legal. There would ordinarily be no conflict of interest in a judge having previously worked for a law firm representing a particular party. I would have declared the matter and/or recused myself had I considered that any possibility of conflict arose. The respondent's representative was unknown to me, and they were based in an office that I had never worked from. The respondent was also unknown to me. The claimant was aware from correspondence from the respondent, prior to the final hearing, that I had had a former working relationship with some staff at Gately Legal and did not raise this as an issue at the time. There is therefore no credible suggestion of a conflict of interest in me hearing the case.

Conclusion

17. 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.

Employment Judge Childe
11 December 2024