



EMPLOYMENT TRIBUNALS

Claimant: Mr M Elnaggar

Respondent: Isabel Mayfair Limited

JUDGMENT

The claimant's application dated 18 November 2024 for reconsideration of the judgment sent to the parties on 14 November 2024 is refused.

REASONS

It is assumed by the Tribunal that the application of 18 November 2024 is for reconsideration of the judgment striking out the claimant's unfair dismissal claim. The application of 18 November 2024 does not clearly state that this is its purpose but given that all of the claimant's other claims for discrimination are continuing to a hearing this is an assumption that the Tribunal considers it is reasonable to make.

The application is refused, because there is no reasonable prospect of the original decision being varied or revoked. This is because:

1. The claimant's application for reconsideration dated 18 November is based on a new claim raised only in the application for reconsideration itself, which is that he considers that he was automatically unfairly dismissed because he was a whistleblower. The issue of whistleblowing was not mentioned at any point in any correspondence before the preliminary hearing, or in his claim form, and was not raised with the judge during their discussion. The information provided in the reconsideration request is vague; the claimant refers to "procedural failings in my termination and include the general manager's acknowledgement of the company's unethical practices and anticipation of my departure." He also refers to "FOI letters from the Metropolitan Police and the Royal Borough of Kensington and Chelsea Council highlight the Respondent's disregard for the legal compliance, lending further credibility to my whistleblowing disclosures". However, the claimant worked in Manchester. He referred briefly to breaches of the respondent's license in Chelsea during the hearing but was not able to explain how this related to his employment in Manchester and did not raise the issue of whistleblowing in this regard.
2. At no point in his reconsideration application does the claimant identify what the whistleblowing disclosures were, or why he considers this the reason for his

dismissal. On the contrary, during the hearing he was clear and said on several occasions that the reason for his dismissal was because of his refusal to talk to a female member of staff, Charlotte, when instructed to do so by the general manager. This may identify an issue of general unfairness which, had he had 2 years' service he may have been entitled to complain about, but it does not identify an issue of automatic unfairness so as to allow him to present a claim without 2 years' service.

3. The "automatic unfair dismissal claim" was not a claim that was before the Tribunal at the case management hearing on 6 November 2024. The Tribunal discussed the claimant's claims and issues at great length during that hearing, spending approximately 90 minutes trying to establish what the claimant's claims were. The claimant had been given an earlier opportunity by EJ Holmes to provide further information in relation to his claims, which he did on 16 July 2024. No mention was made in that lengthy document about whistleblowing or automatic unfair dismissal. Yet more information was provided in his agenda form which he completed in preparation for the hearing and again no mention was made there either.
4. The claimant provided yet more information in a letter to the Tribunal dated 11 November 2024. He said that he was at a disadvantage because the respondent's change of counsel meant that he had to explain the facts of the case all over again, and this affected his concentration. However, the conversation during the hearing was almost exclusively with the judge, who was asking the claimant a series of open and closed questions to try to understand the legal basis of his claims. Furthermore, the letter of 11 November 2024 does not provide any information from which it could be said that the claimant had any basis for alleging that he had been dismissed for whistleblowing. He refers to "contractual breaches and workplace safety" but provides no further information. Issues of workplace health and safety were not raised discussed with the Tribunal during the case management hearing.
5. The Tribunal specifically requested that the claimant not seek to continually expand his claims during the case management hearing. This is also referred to at paragraph 11 of the case management order. The Tribunal finds that, having received the judgment striking out the unfair dismissal case, the claimant has sought to introduce a whistleblowing claim not because this was in his mind at an earlier stage in the proceedings, but because this would allow him to avoid the need for 2 years' service and allow him to carry on with an unfair dismissal claim. This is not a valid basis for a reconsideration application. The claimant is reminded that he has validly presented claims of disability, race and sexual orientation discrimination. The Tribunal also highlighted that there had not been any time left during the hearing to discuss possible claims of victimisation, or indirect discrimination but that a subsequent hearing on 9 January 2025 may allow such claims to be clarified.
6. Nothing in the claimant's reconsideration application changes that noted at paragraph 13 of the case management order,

"The claimant had included a claim of unfair dismissal. He does not have two years' service. He had several opportunities, both before this hearing and during this hearing, to say why his claim falls within the exceptions to the need for two years' service, but none of the information he has provided shows this to be the case. His unfair dismissal claim is therefore dismissed."

Case No: 2402474/2024

Employment Judge Barker

Date: 13 December 2024

JUDGMENT SENT TO THE PARTIES ON
16 December 2024

FOR THE TRIBUNAL OFFICE