THE EMPLOYMENT TRIBUNAL

Claimant: Mr R Knott

Respondent: Dover Harbour Board

JUDGMENT

The Claimant's application dated 1 January 2025 for reconsideration of the Judgment sent to the parties on 24 December 2024 is refused.

REASONS

1. On 1 January 2025, the Claimant wrote to the Tribunal requesting a reconsideration of my judgment on his amendment application, which was sent to the parties on 24 December 2024 ("the December 2024 Judgment"). The Claimant also requested reconsideration of a paragraph in my Case Management Order of the same date ("the December 2024 CMO").

2. The Claimant's grounds for reconsideration can be summarised as follows:

    a) The bundles provided by the Respondent did not include his response to EJ King's case management order following the case management preliminary hearing on 1 August 2024 ("the August CMO"). The Claimant had not noticed this owing to late delivery of the bundles, his disabilities and his medication. The Claimant believes this weakened his case in relation to his amendment application.

    b) Having confirmed at the Preliminary Hearing on 17 – 18 December 2024 that he did not rely on PTSD as a disability, as a result of which the planned hearing to determine disability did not go ahead, the Claimant apparently seeks to change his position and revert to relying on PTSD as a disability.

    c) The Claimant disputes my finding at paragraph 23 of the December 2024 Judgment that age discrimination through failure to pay the national minimum wage was a new claim.

    d) The Claimant disputes my finding at paragraph 50 of the December 2024 Judgment that the comments there referred to as allegedly having been made by Vicky Beatty constituted a new claim. The Claimant says that this matter was raised by him in his FOI and SAR request on 12 June 2023.

    e) In relation to point 5 in the December 2024 CMO, the Claimant argues that automatic unfair dismissal (with the remedy of reinstatement) should be included in his claim because (i) the constructive dismissal is said to be discriminatory; (ii) the failure to make reasonable adjustments, which is part of

the breach relied upon in support of the constructive dismissal allegation, is a health and safety matter; (iii) harassment and flexible working being part of the claim is further grounds for automatic unfair dismissal by way of constructive dismissal. In support of these arguments, the Claimant says that constructive unfair dismissal will be automatically unfair if the breach leading to resignation stems from discrimination, whistleblowing, trade union membership or activities or exercising statutory rights such as maternity, paternity or flexible working rights. He relies on *Meikle v Nottinghamshire County Council* [2004] EWCA Civ 859 and *Bournemouth Univesrity Higher Education Corporation v Buckland* [2010] EWCA Civ 121.

3. In accordance with rules 72(1) and (3) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('the ET Rules'), I have carefully considered the Judgment and Reasons, the Claimant's submissions and the cases to which he refers, and I have concluded that there is no reasonable prospect of the original decision being varied or revoked in the interests of justice.

4. I set out my brief reasons for this conclusion in respect of each point detailed above.

5. I have read the document referred to in point 2(a). Whilst it is unfortunate that it was not included in the hearing bundle, no specific reason as to why it should cause me to reconsider my judgment has been advanced. I have taken this document into account in considering the specific points the Claimant has asked me to reconsider.

6. Point 2(b) does not request reconsideration of any finding in my judgment. As is recorded at paragraph 11 of my judgment, I agreed with the Claimant that PTSD was pleaded as a disability in the claim form; however, the Claimant then said, following a clear explanation from me and a lengthy discussion, that he did not want to rely on PTSD as a disability. His reason for this, which was wholly logical, was that he did not think the Respondent had discriminated against him because of his PTSD, but felt that its conduct had exacerbated his PTSD. I can see no reason why the Claimant should now be permitted to withdraw this concession, which would potentially necessitate a further hearing to determine the issue of disability. In any case, as noted at the start of this paragraph, this is not a request to reconsider my judgment as I did not reach a judgment on this issue.

7. In relation to point 2(c), this question was canvassed at the hearing itself. I found that the claim form did not contain any indication that the failure to pay the national minimum wage was done because of, or disadvantaged the Claimant because of, his age. This was therefore a new claim, because it was not raised in the claim form. The Claimant's reconsideration application acknowledges this, as he says he made this clear only in his response to EJ King's August CMO, and at the hearing before EJ Wilson in November 2024. I note in passing that in fact the response to EJ King's orders does not raise any claim of age discrimination in relation to failure to pay the minimum wage. This is raised only as a failure to make a reasonable adjustment in respect of autism (see paragraph 5 on p. 2, under point 26 on p. 3 and under point 80.3.3 on p. 4 at paragraph 1). The argument that this was not a new claim therefore has no prospect of succeeding.

8. In relation to point 2(d), as for point 2(c), the Claimant's own reconsideration application implicitly acknowledges that his argument is incorrect. The Claimant says that his allegation about Vicky Beatty, referred to at paragraph 50 of my

December 2024 judgment, was not a new claim because he raised it in his FOI and SAR on 12 June 2023. However, those requests post-date the claim form, which was submitted on 27 April 2023, and does not contain this allegation. The argument that this was not a new claim therefore has no prospect of succeeding.

9. The short response to point 2(e) is that I did not issue any judgment to the effect that the Claimant could not bring an unfair dismissal claim. My December 2024 CMO refers back to the Order of EJ Wilson at paragraph 49, which states:

"The Claimant does not have the qualifying length of service to bring a claim for ordinary unfair dismissal, but he pursues a claim for discriminatory constructive dismissal."

10. The Claimant does not suggest that he has sufficient service to bring an ordinary unfair dismissal claim, but in his reconsideration application appears to argue that he has an "automatic" unfair dismissal claim. The first basis on which he says this is that he has a claim for "discriminatory" constructive unfair dismissal. It is right to say that he has a claim for "discriminatory" constructive dismissal, but that is a claim under the Equality Act 2010, not a claim for unfair dismissal under the Employment Rights Act 1996. The case of *Meikle*, to which the Claimant refers, does not say that a constructive dismissal arising from a failure to make reasonable adjustments is "automatically" unfair under one of the relevant sections of the Employment Rights Act 1996. It holds that a constructive dismissal can be a dismissal within the meaning of what was then s. 4(2)(d) of the Disability Discrimination Act 1995 (the equivalent of what is now s. 39(2)(c) Equality Act 2010). A claim for constructive "discriminatory" dismissal may therefore be brought under the Equality Act 2010, which has no qualifying period of service, but that is distinct from any claim for unfair dismissal brought under the separate regime in the Employment Rights Act 1996.

11. The Claimant also now suggests that he has a claim for automatic unfair dismissal because *"a failure to make reasonable adjustments is a health and safety matter".* It is possible that a failure to make reasonable adjustments could be a health and safety matter. However, neither in his original claim nor in his reconsideration application does the Claimant suggest that the <u>treatment which caused him to resign</u> was done for one of the prohibited reasons set out in s. 100 ERA 1996, which is the section making certain health and safety-related dismissals automatically unfair. He has not, therefore, made any claim for automatic unfair dismissal under s. 100 ERA 1996.

12. Finally, the Claimant contends that *"harassment and flexible working being part of the claim is further grounds for automatic unfair dismissal by way of constructive dismissal".* Claims for harassment again fall under the Equality Act 2010 and thus the reasoning at paragraph 10 above applies. It appears from the reconsideration application that the Claimant is suggesting that he may have a claim under s. 99 Employment Rights Act 1996, which covers dismissal for reasons related to family leave. There is no suggestion that the Claimant has ever sought to take family leave and this is not referred to in his claim form at all.

13. It appears that this last request for reconsideration was made because the Claimant wishes to have the remedy of reinstatement or re-engagement to his role. As I explained to the Claimant at the December 2024 Preliminary Hearing,

reinstatement and re-engagement are not remedies that are available to him in his claims under the Equality Act 2010. He has not brought any claim for "automatic" unfair dismissal under the Employment Rights Act 1996, and he does not have sufficient service to bring a claim for "ordinary" unfair dismissal. Therefore the remedies of reinstatement and re-engagement are not available to him in this claim.

14. For these reasons, I dismiss the Claimant's application for reconsideration under rule 72(1) of the ET Rules 2013.

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Employment Judge A Beale KC
Date: 3 January 2025

Sent to the parties on
Date: 6 January 2025