EMPLOYMENT TRIBUNALS

Claimant: Mr Daniel Hamill

Respondent: Carbon Rewind Ltd

SECOND RECONSIDERATION JUDGMENT

The Claimant's application dated 29 March 2025 for reconsideration of the reconsideration judgment dated 6 March 2025, sent to the parties on 21 March 2025 is refused.

REASONS

1. I have undertaken a preliminary consideration of the Claimant's second application for reconsideration. The Claimant's application in his email dated 29 March 2025 to the Employment Tribunal appears to be based upon an argument that the Claimant mislabelled his claim under section 103A Employment Rights Act 1996 (protected disclosure) when it should have been labelled under section 100 Employment Rights Act 1996 (health and safety dismissal) and that the Employment Tribunal erroneously put the burden of proving that the dismissal was because of a protected disclosure on the Claimant. The Claimant's application came within 14 days of the reconsideration judgment.

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 68 of The Employment Tribunal Procedure Rules 2024 ('ETPR')).

3. Rule 70(1) ETPR 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 expressed succinctly by Mrs Justice Simler sitting as President in the EAT decision of **Liddington v 2Gether NHS**

Foundation Trust EAT/0002/16. 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."**

5. In common with all powers under the ETPR, preliminary consideration under rule 70(1) must be conducted in accordance with the overriding objective as set out in rule 3, 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

6. The first ground of the application is based upon exactly the same premise as the previous application. The Claimant is correct that when a litigant in person mislabels a claim that the Employment Tribunal should look to the substance of the claim rather than the label. However, there is no reason to believe that the claim was mislabelled in any event. Section 100 of the Employment Rights Act 1996 does not fit the facts as found by the Employment Tribunal and there was no reason for the Employment Tribunal to have facts that would have fit the facts applicable to the Claimant, not least because the Claimant did not assert he was a health and safety representative. It is not for the Employment Tribunal to find claims for the Claimant, the Employment Tribunal does not represent the Claimant. The Claimant asserted a claim of whistleblowing, the facts if proved could have amounted to whistleblowing. However the Employment Tribunal did not find facts that did prove that the Claimant had been dismissed because of whistleblowing.

7. The second ground of the application is a legal argument that the Claimant makes in relation to section 98 of the Employment Rights Act 1996. As a legal argument it is more appropriately directed at the Employment Appeal Tribunal (which I understand that the Claimant intends to make to the Employment Appeal Tribunal in any event). But dealt with simply, it was the Claimant who asserted that the reason for his dismissal was by reason of protected disclosure not the Respondent and so the Claimant's argument does not apply to his claim.

8. The basis of the Claimant's application is an attempt to re-open the case to argue it from a different perspective, in that sense it represents 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 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 application for reconsideration is therefore refused.

Approved by:

Employment Judge Young

DATED 25 April 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 May 2025

FOR THE TRIBUNAL OFFICE