



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. K Stormowski

v

Heritage Care Limited

DECISION ON APPLICATION FOR RECONSIDERATION

**Rules 70-73 of Schedule 1 to the Employment Tribunals
(Constitution and Rules of Procedure) Regulations 2013**

1. The claimant's application for reconsideration of the judgment dated 30 July 2018 is refused.
2. Reasons for this decision are set out below.

REASONS

Background

1. By claim form dated 6 January 201 the claimant brought claims of unfair dismissal, race discrimination and breach of contract. The claims were resisted by the respondent.
2. At a preliminary hearing on 11th and 12th July 2018 the Tribunal found that all of the claims had been presented out of time, and that accordingly the Tribunal does not have jurisdiction to hear them. The Tribunal also found that the claimant had not been dismissed. The Tribunal's judgment was sent to the parties on 17 July 2018 and should be read alongside this decision.
3. On 30 July 2018 October the claimant applied for reconsideration of the judgment. I have given his application careful consideration.

The relevant law

4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide as follows:-

Rule 70 Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Rule 71 Application

...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...and shall set out why reconsideration of the original decision is necessary.

Rule 72 Process

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked...the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing...

5. The only ground upon which a party can now apply for reconsideration of a judgment is 'the interests of justice'. The reconsideration process is not designed to give a party that is unhappy with the outcome of a hearing, a 'second bite at the cherry' and re-argue points that have been properly considered at the hearing. When considering whether it is in the interests of justice to reconsider the judgment, the Tribunal must keep in mind that the interests of justice' applies to both parties – not just the unsuccessful one. There is also a public policy interest in the finality of litigation.
6. Lord McDonald said in Stevenson v Golden Wonder Ltd [1977] IRLR 474 that the (then) review provisions were "*not intended to provide parties with the opportunity of a re-hearing at which the same evidence can be rehearsed with different emphasis...*" In Trimble v Supertravel Ltd [1982] ICR 440 the Employment Appeal Tribunal held that on an application for what was at the time a review (and is now reconsideration), if a matter has been ventilated and properly argued during the course of Tribunal proceedings, then any error of law falls to be corrected on appeal and not by way of review.

Decision

7. In his application for reconsideration the claimant argues that:-
 - a. the Tribunal relied only upon the evidence which supported its decision and ignored evidence which did not support its decision;
 - b. the Tribunal missed some information;

- c. the Tribunal's explanation does 'not make sense' for him;
 - d. There was no written proof of his resignation from the respondent; and
 - e. The Tribunal made no decision in relation to the claimant's application for witness orders.
8. I have considered carefully these arguments and the issues raised in the claimant's application for reconsideration.

Relying only on part of the evidence and ignoring or missing evidence

9. One of the primary roles of the Employment Tribunal is to consider the evidence before it and make findings of fact. In many cases, including this one, where there is a conflict between the evidence or arguments of each party, the Employment Tribunal has to weigh up the evidence before it and decide which evidence it prefers.
10. At the preliminary hearing in July only the claimant gave oral evidence. The respondent did not adduce any oral evidence. There was documentary evidence introduced by both parties, and the claimant was given time to adduce additional evidence during the course of the hearing.
11. Having reviewed the decision in this case, I am satisfied that proper weight was given to the claimant's arguments, to his oral testimony and to the documentary evidence. The fact that a party disagrees with the findings of fact of the Employment Tribunal is not in itself grounds for the Tribunal to reconsider its decision.
12. The claimant has not, in my view, set out any basis for me to conclude that the interests of justice require reconsideration of the evidence and of the findings of fact made at the preliminary hearing.

The Tribunal's explanation does not make sense to the claimant

13. Whilst it is of regret that the claimant believes that the decision does not make sense, I have reviewed and am satisfied that the findings of fact and conclusions are clearly set out. Even if that were not the case, I am not persuaded that it would be in the interests of justice to reconsider a decision on this ground alone.

No written proof of the claimant's resignation

14. The Tribunal did not find that the claimant resigned. It found that the claimant was dismissed, and that the dismissal was overturned on appeal.

No decision made in relation to the claimant's application for witness orders

15. In light of the Tribunal's findings at the preliminary hearing, the effect of which was that the entire claim failed, it was not necessary for the Tribunal to consider

any further case management issues including any application for witness orders.

16. For the above reasons, there is no reasonable prospect of the original decision being varied or revoked, and accordingly the claimant's application for reconsideration is refused.

Employment Judge Ayre

September 17, 2018

Sent to the parties on:

For the Tribunal: