Case No: 2205632/18

EMPLOYMENT TRIBUNALS

Claimant: **Mr P. McQueen**

Respondent: **General Optical Council**

JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on 10 July 2020 is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. On 10 July 2020 the tribunal sent to the parties reserved judgement on reasons into claims brought by the claimant.

2. On 20 July 2020 the claimant sent a letter, a 17 page application document, and a medical report, asking for the judgment and reasons to be reconsidered. Later that day he attached a "corrected document". On 21 July 2020, the claimant sent two more documents, containing generic background material on dyslexia. On 5 August 2020 he sent an application to amend the judgement in respect of the reporting of comments he had made about Jewish people "making it up" which were the subject of disciplinary proceedings against him. On 11 August he sent a further "reconsideration of tribunal judgement" application, which appears to be a duplicate. On 13 August he made a request that paragraph 91 of the reasons (which relates to the same disciplinary allegations), be removed on the basis that this incident was found not to have taken place, and it was not relevant to the issues.

3. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal "may reconsider any judgment

where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

4. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

5. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in Outasight VB Ltd v Brown UKEAT/0253/14/LA that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

6. In light of this, the applications made on the 20th and 21st of July are in time. The applications made on the 5th and 13 August 2020 are out of time. So is the application made on 11 August, if there are material changes in the document. In the case management hearing on 21st of August I asked the claimant it was able to identify whether any one of his documents contained the entire application to reconsider, and he answered no, it was necessary to read all of them to understand the application. I exercise jurisdiction to extend the time limit to reconsider the reasons to include all the claimant applications up to 13 August 2020 on the basis that it would be just and equitable to deal with his overlapping issues at one time, notwithstanding the time limit which is intended to ensure there is finality in judgement.

7. The claimant makes a number of points on various details of the reasons. They can be grouped as follows: (1) but the bundles were incomplete as respondent did not include all the claims documents in the joint hearing bundle (2) a large number of detailed criticism that facts recorded in the documents for the witness statements have been omitted from the reasons alternatively a dispute with the tribunal's findings on particular facts and (3) a discussion of the medical evidence considered by the tribunal, and (4) the introduction of new generic material on disability.

8. Taking these in turn, it can be seen from the reasons that the bundles did not include all claims documents that the claimant submitted his own bundle, and this was considered by the tribunal. If there was difficulty following the claimant's case, it was not because documents have been omitted from the joint hearing bundle, but because the claimant's witness statement was difficult to match with either bundle. The tribunal took massive slowly and it is not shown that any particular document that the claimant wished the tribunal to consider was not put before them. The only one I can identify is the claimant saying that the

email which attached to the revised CV was sent on 13th of March 2015. The claimant could have put this before the tribunal, especially given the importance of the respondent's knowledge of disability in claims for section 15 discrimination and failure to make reasonable adjustment the disability. In the reasons the tribunal considered when the revised CV was sent, in the absence of specific evidence on this from the claimant in his witness statement, or any document in any bundle, and as stated, the tribunal considered that even if the CV had been sent when he was applying for the permanent position, it was not reasonable for the respondent to have noted this small change in a long document if it was not specifically drawn to their attention.

9. I reviewed the complaints about findings of fact. A tribunal was not required to recite all the evidence it followed, but to make findings on what it heard. The claimant may disagree with those findings, but reconsideration is not an opportunity to argue that they are perverse. In any case, some of the material the claimant now introduces was not before the tribunal and an example is an assertion that it was not proved that he had in fact recorded the private discussion of the panel with his recording pan. The claimant had not said that he did not record private discussion, but in any event, what mattered was the panel's perception that can had been left in the room while they were in private discussion, and their concern that it could contain private recording. As they could not have access to the pen, they have no way of knowing if this was true or false. There is also discussion of the tribunal misunderstanding the difference between "meltdown behaviour" and "pre-meltdown behaviour". This distinction did not appear in the claimant's evidence in the hearing.

10. On the medical evidence, the claimant seeks to re-argue points in the medical evidence considered by the tribunal. As is clear from the reasons, tribunal read the medical evidence, considered it in the light of other evidence, and made its findings. Reconsideration is not an opportunity to reargue points that have already been argued at the hearing.

11. As to the new generic material, the claimant has not explained why this or other similar material could not have been placed before the tribunal at the hearing, or why will be in the interests of justice to consider it after the decision has been made.

12. As for the disciplinary investigation of allegations that he had made anti-Semitic remarks, it is clear from the tribunal reasons that the investigating officer who heard the evidence concluded that there had been a conversation and there had been miscommunication it is also clear that disciplinary action did not follow. The important point for a Tribunal considering whether there was discrimination in the way allegations were investigated, and for public understanding of why the tribunal reached the conclusions that it did, is to know what the allegation was that the respondent was investigating. Until it had been investigated, they would not know whether it had substance or not, but it is necessary to record what it was, so as to be able to make a

material comparison of cases**.** What was reported to them was at a serious allegation of racism. The tribunal is not able to make its own finding of the claimant said what was alleged, but it should be clear to the reader that the respondent's investigator did not uphold the finding of racist remarks.

13. It is important for the administration of justice that decisions are final unless there are very good reasons for reopening them. The tribunal considered the claimant's case over many days, with a large number of documents, both in the joint bundle and the claimant's own material, and much witness evidence, to reach the conclusions that it did. The claimant has not shown that there was evidence not before the tribunal that could not have been given to them at the time of the hearing, nor has he shown that he was not given an opportunity to put his case and question the evidence. Applying the test in rule 72, there is no reasonable prospect of success in the application for reconsideration.

Employment Judge GOODMAN

Date 21 August 2020
JUDGMENT SENT TO THE PARTIES ON

22/08/2020

FOR THE TRIBUNAL OFFICE