EMPLOYMENT TRIBUNALS

Claimant: Mr J Scott

Respondent: Sir Bob Russell MP

THIRD RECONSIDERATION OF JUDGMENT

1. The Claimant's further application, dated 24th January 2017, for reconsideration of the Judgment sent to the parties on 4th January 2011 is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Once again, the Claimant is making an application for reconsideration of the Judgment of the Tribunal chaired by Employment Judge Skinner, 4th January 2011. It is stressed that this is not an application under rule 69. That rule, often referred to as the "slip" rule is designed to rectify clerical or minor errors resulting from accidental slips or omissions. It can only be used where there is no dispute between the parties. The only way to correct a major error – as is complained of here – is by application for reconsideration under rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. Therefore, time limits apply. The Claimant's latest application for reconsideration is, of course, way out of time. He has also exhausted all lines of appeal, to the EAT and the Court of Appeal.

2. The Claimant's fourth application for reconsideration/review is very lengthy, it is essentially on the same grounds as previous applications – namely that justice cannot be achieved until his alibi is looked at and ruled upon. The Claimant is correct to say that the Tribunal is "master of the facts". However, the Claimant should understand that the only way

that the Tribunal can reopen a case and hear and read more evidence and make more findings of facts is under the provisions of rules 70 to 73. The EAT and the Court of Appeal can and sometimes do direct the Tribunal to reopen a case and received more evidence. However, that has not happened here. Nevertheless, I have looked at the evidence the Claimant has brought to the Tribunal's attention. For the purposes of this reconsideration, I assume that the Claimant would or may be able to establish his alibis.

3. Thus, taking that assumption into account I consider the ways that the Claimant has brought his claim. It is important to stress that the Claimant did not have the necessary length of service (at the time 1 year) to bring a claim for ordinary unfair dismissal. If he had been able to do so, and on the facts that can be found he would not doubt have been able to establish such a claim (although it is unlikely that he would have been dismissed without due process in those circumstances). The Claimant has therefore had to rely on other types of claim – namely, automatic unfair dismissal for making a protected disclosure, a discriminatory dismissal on gender grounds and breach of contract in the context of his dismissal. It is on these three specific complaints that the Skinner Tribunal ruled that he had no reasonable prospects of success, for the reasons given by that Tribunal.

4. Looking first at the protected disclosure complaint. An essential ingredient for a Claimant to prove in any whistle blowing case is that he or she made a protected disclosure (as defined in the legislation). The Skinner Tribunal decided that the disclosure relied on by the Claimant had no reasonable prospects to satisfy the definition of protected disclosure as set out in the Employment Rights Act – see paragraph 60 to 63 of the Decision. Further, by paragraph 64, the Skinner Tribunal determined that there was no or insufficient evidence of a causal link between any protected disclosure established and the Claimant's dismissal. Perhaps the Claimant recognised the difficulties he faced in the context of this claim because he did not appeal the strike out of the protected disclosure complaint to the EAT.

5. As far as the sex discrimination complaint is concerned where the Claimant has the burden of establishing a prima facie case of sex discrimination. Again, the Skinner Tribunal determined that – on the basis of what they had read and heard – the Claimant would not be able to do so. The Claimant asked me to look carefully at the transcript of the Court of Appeal proceedings. I have done that. I note that Mr Edwards, on the Claimant's behalf, said to the Court of Appeal thus: "…we do not challenge the finding of fact that has now been made by the Tribunal, that as a matter of fact, the Claimant's sex did not influence his dismissal."

6. The findings relating to the breach of contract claim at paragraphs 58 to 60 of the Judgment. The Claimant suffered no loss, because he received four week's pay in lieu of notice, a period of time during which

there could have been a contractual dismissal disciplinary process and a fair dismissal.

7. Thus, the legal hurdles and the evidence required to overcome them were the barrier to the success of the Claimant's claims – not the alleged failure to consider it properly or at all the merits of his alibi. Employment Judge Skinner's comment that the date of the alleged "contretemps" between the Claimant and Miss Beedell did not matter.

8. I have as I said above, carefully considered the transcript of the Court of Appeal. Mr Edwards on the Claimant's behalf said this: "The grounds of appeal which are still live…the Claimant does not accept the Tribunal decision but has taken the view the appeal should be restricted to the costs issue; done so on advice, obviously." I understand that to mean that the Claimant has, in effect, abandoned an appeal against strike out the decision of the Tribunal. It is therefore no longer a live issue. As he decided not to pursue the appeal in the Court of Appeal he is stopped from attempting to reopen his case here in the Tribunal.

9. I refer to the earlier decisions, refusing the Claimant's applications for reconsideration and review. The reasons set out in those decisions still stand. Therefore, as there is no reasonable prospect of the original decision being varied or revoked (including where substantially the same application has already been made and refused), the application for reconsideration is refused.

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Employment Judge G P Sigsworth

ORDER SENT TO THE PARTIES ON

22 February 2017……

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FOR THE SECRETARY TO THE TRIBUNALS