EMPLOYMENT TRIBUNALS

Claimant: Miss S C Hall

Respondent: Chief Constable of West Yorkshire Police

Heard at: **Leeds** **On:** **7 June 2017**
In Chambers:
27 June 2017 & 4 July 2017

Before: **Employment Judge Howard**
Members: **Ms L Atkinson**
Mr M Brewer

Representation
Claimant: Mr J Antell, of Counsel
Respondent: Mr S Mallett, of Counsel

Upon application made by letter dated 28 March 2017 to reconsider the remedy judgment dated 26 October 2016 under Rule 71 of the Employment Tribunals Rules of Procedure 2013 (the time limit therein having being extended by the Tribunal).

RESERVED JUDGMENT

The judgment dated 26 October 2016 is confirmed.

RESERVED REASONS

1. **Introduction**

1.1 This is a hearing before the full Tribunal to reconsider the remedy judgment dated 26 October 2016 solely in respect of the discount rate for pension loss. The Tribunal had concluded that the method of pension loss should be assessed in accordance with the Ogden Tables using a discount rate of 2.5%. The claimant has applied for reconsideration because a new discount rate of -0.75% came into force on 20 March 2017.

2. **The Hearing**

2.1 In addition to all the material provided at earlier hearings in this matter, the Tribunal had before it two further bundles of documents:-
Folder 1 consisting of 346 pages
Folder 2 consisting of 71 pages, being a joint authorities bundle.

2.2 No witnesses were called at this hearing.

3 **The Law**

3.1 The Tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so. (Statutory Instrument 2013/1237 Schedule 1Rule 70). The power is exercisable either on the Tribunal's own initiative or on the application of a party. On reconsideration, the decision may be confirmed, varied or revoked. Previously under the 2004 Rules there were five possible grounds for holding a review. There is now only one ground on which a judgment can be reconsidered, namely the interests of justice.

3.2 Under the previous Rules, the interests of justice ground was described as "a residual category of case, designed to confer a wide discretion on Tribunals" (*Flint v Eastern Electricity Board 1975 ICR 395*). But whilst the discretion is undoubtedly wide, it was held not to be boundless; it must be exercised judicially and with regard, not just to the interests of the party seeking the review, but also to the interests of the other party and to the public interest requirement that there should be, as far as possible, finality of litigation. In the case of *Jurkowska v Hlmad Limited 2008 ICR 841* Lord Justice Rimer said that dealing with cases justly requires that they be dealt with in accordance with the recognised principles. He held that the principles underlying such cases as *Flint* referred to above remain valid and he singled out for approval the weight that was attached in *Flint* and other cases to the importance of finality of litigation.

4 **Submissions**

4.1 Mr Antell for the claimant, referred the Tribunal to the case of *Vakante v Addey and Stanhope School 2004 EWCA Civ 1065.* He did not dispute the principle that there would be no error of law on the part of the Tribunal in failing correctly to apply a law which was not in force at the date of its decision. However, he submitted that this principle had nothing to do with the present case where the Tribunal had not yet determined quantum. He argued that the Tribunal always must look at the position at the time of the award itself.

4.2 Mr Mallett for the respondent emphasised that the Tribunal can only reconsider a matter where it is necessary in the interests of justice

to do so. He said that it is not necessary in the interests of justice for there to be a reconsideration of an issue which was determined in accordance with the applicable law at the time of the judgment. A reconsideration cannot be made on the basis of a change in the law. It is well established that the applicable law is the law at the time of the decision. There can be no error of law where the Tribunal failed to apply a law which was not in force at the time. That was the principle of the *Vakante* case referred to above. Mr Mallett argued that the issue of the appropriate discount rate was a central part of the submissions at the remedy hearing. The whole issue was fully argued at that time. The claimant chose not to call any actuarial evidence. The issue was determined after considerable debate and should not be further considered. Paragraph 2 of the remedy judgment confirms that quantum was established in accordance with principles. All that remains is to determine amount. It is clear the Tribunal has made a decision which was correct in law at the time. Changing circumstances thereafter should not lead to a reconsideration. The fact that the Lord Chancellor chose to change the rate thereafter does not mean it is appropriate to reopen the case. Finality of decisions is an important principle. He pointed out that there could be a further change in the discount rate because the Lord Chancellor has started a further consultation on it. If it is changed again it would make a mockery of the law if yet another reconsideration was allowed. He also made the point that just because it makes a considerable difference does not mean that the Tribunal should reconsider it. It makes a considerable difference to the respondent also. It is not a proper consideration to reconsider simply because if determined now it would give the claimant a lot more money. The Tribunal has to balance the interests of both parties.

5 Conclusions

5.1 The Tribunal has carefully considered the submissions from Counsel, both oral and written. In this instance the Tribunal prefers the submissions of Mr Mallett for the respondent. The claimant chose not to call actuarial evidence at the remedy hearing on 9 August 2016. The issue of the correct method of assessing pension loss was fully argued at that hearing. The Tribunal concluded that assessment should be in accordance with the Ogden Tables using a discount rate of 2.5%. The parties were asked to seek to agree the compensation in respect of the claim of discrimination arising from disability in accordance with the decisions of the Tribunal set out in the Reserved Judgment on remedy. All that remained was for the parties to calculate the exact amount of compensation by applying the principles determined by the Tribunal. In the absence of agreement the parties were at liberty to return to the Tribunal. This is what has happened.

5.2 It is clear that the Tribunal made a decision which was correct in law at the time. The Tribunal has to have regard not only to the interests of the party seeking the review but also to the interests of

the other party and to the public interest requirement that there should, as far as possible, be finality of litigation.

5.3 Accordingly, on reconsideration, the decision of the Tribunal made on 20 September 2016, and promulgated on 26 October 2016, is confirmed.

Employment Judge Howard

Date: 21 July 2017