Case No: 2300003/2017



EMPLOYMENT TRIBUNALS

Claimant Mrs R Ross

Respondent Dr Mariam Noorani

JUDGMENT

ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration of the Judgment sent to the parties on 3 April 2017 is refused on the grounds that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

- Rule 72 of the Employment Tribunal Rules deals with the process of reconsideration. Rule 70 provides that a tribunal may on an application of a party reconsider any judgment where it is necessary and in the interest of justice to do so.
- 2. Under the 2004 Rules there were five grounds on which a tribunal could review a judgment. One of these was that the interests of justice required a review. The 2013 Rules provide only one ground, that reconsideration is necessary in the interest of justice. Public policy is clear that in all proceedings of a judicial nature there should be finality in litigation. It is therefore uncontentious to say that reconsideration should be seen as a limited exception to the general rule that decisions taken in the Employment Tribunal should not be re-opened and re-litigated. Reconsideration is not the means by which a disappointed party can obtain a second opportunity for the case to be heard.
- 3. The application made by letter dated 1 June 2017 concludes:-
 - "The above is repetition of what I informed the court on 19th March 2017. I have highlighted and attached e-mails I did not have on the day. I would therefore be very grateful if you could please reconsider your decision as I feel the court has been misguided in making the judgment."
- 4. It is therefore clear that the basis of the application is the material provided on the hearing of the case with additional material available to the

Case No: 2300003/2017

Respondent but not provided on the hearing.

5. At paragraph 18 the Respondent accepts that the misunderstanding which led to the claim "could have partly been avoided by supplying a contract". At paragraph 23 the Respondent states that she has paid the court fee, the holiday pay and the hours outstanding. She disputes the award made under section 38 of the Employment Rights Act 2002.

- 6. I regret to say that in the Judgment I referred to the Employment Rights Act 2002 which should have been a reference to the Employment Act 2002.
- 7. No explanation is offered by a way of grounds for reconsideration in relation to that element of the Judgment. Section 38 of the Employment Act 2002 imposes an obligation in the terms "the tribunal must" increase the award by the minimum amount and may if it considers it just and equitable in all the circumstances increase the award by the higher amount instead. The minimum amount is two weeks pay and a higher amount is four weeks pay. The tribunal is released from the obligation if there are exceptional circumstances which would make an award or increase unjust or inequitable.
- 8. I do not consider that anything has been advanced to suggest that this case was exceptional. The award was made in a higher amount because the Respondent appeared to had been provided with all the necessary material to comply with her obligations but failed to do so and the evidence suggested that this was in order to obtain an advantage or had the effect of obtaining an advantage in respect of the Claimant during the period of her probation. The Respondent has put forward nothing in the application to engage with the rationale for that award given in the reasons at paragraph 20.
- 9. In relation to notice pay the simple fact is that on the hearing the allegations of gross misconduct were not made out and the allegation appeared to have arisen in response to the Claimant's claim for notice pay.
- 10. For these reasons I do not consider that the application for reconsideration stands any reasonable prospect of success. It amounts to a request to have a second hearing. The application is therefore refused.

Regional Employment Judge Hildebrand Date 8 August 2017