



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss C A Baines

**Respondent:** Blackpool Borough Council

Employment Judge Tom Ryan

## JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration made on 26 July 2017 is dismissed.

### REASONS

1. This is an application for reconsideration of the judgment sent to the parties on 16 May 2016 by which the claimant's claims were dismissed.
2. The tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
3. Under rule 71 an application for reconsideration must be made within 14 days the date on which the judgment (or written reasons, if later) was sent to the parties.
4. The approach to be taken to applications for reconsideration was set out in the recent case of **Liddington v 2Gether NHS Foundation Trust** UKEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
  - 4.1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;

- 4.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
  - 4.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
5. In paragraph 34 and 35 of the judgment Simler P included the following:
- “A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.
- Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”
6. I note my way of a preliminary observation that this is an application which is made 14 months out of time. The claimant has not sought to explain the delay in the application.
  7. It is relevant also to consider the history of this litigation since the tribunal's original judgment. The claimant did not seek a reconsideration at the time. She appealed to the EAT the appeal was permitted to go through to a preliminary oral hearing. At that hearing the appeal was dismissed by His Honour Judge Peter Clarke.
  8. The respondent had made an application for costs. The tribunal decided this and written representations at the request of the parties we made an order that the claimant the sum of £20,000 as a contribution to the respondent's costs. The claimant sought a reconsideration of that order. That reconsideration was decided after an oral hearing on 12 June 2017. Judgment and reasons have been prepared and signed today. It is my expectation that they will be sent out to the parties at the same time as this judgment.
  9. My reason for referring to the most recent hearing is that in the reconsideration application on the costs order the claimant referred to the same matters as she now refers to in this application.
  10. As part of the materials put before the tribunal in support of the claimant's application reconsideration of the cost judgment the claimant produced a document dated 8 February 2017. At the claimant's request we consider these at

the cost reconsideration hearing. Paragraphs 13-24 of our written reasons for the decision on that application are material in this respect.

11. As part of the preliminary consideration of this further application I have considered the two documents side by side.
12. Paragraphs 1 and 2 make precisely the same point as in the earlier document although they are amplified, by the addition of some parts original paragraph 8. Paragraphs 3-7 appear to be identical in the two documents. Paragraphs 9 and 11 of this application repeat paragraphs 8 and 9 respectively of the original document.
13. Paragraphs 8 and 10 of this application do not appear to have been set out previously. Paragraph 8 is an amplification of the claimant's argument in respect of her criticism that there was a marked copy of her witness statement placed before the tribunal at the original hearing. This is a point we have already considered in dealing with the other reconsideration application and to which we have attached no significance. Paragraph 10 is an argument about the credibility of witnesses at the original hearing.
14. As is apparent from our costs reconsideration judgment the substance of the matters upon which the claimant now seeks to rely were in large part canvassed before the EAT. The rule requiring that an application for reconsideration is made within 14 days (whereas an appeal can be made within 42 days) indicates that the process in the ET and the EAT are intended to provide an order and an orderly way of dealing with challenges to the tribunal's decision. In my judgment it would therefore take something highly unusual, such as the discovery of entirely unforeseen evidence, after an appeal has been disposed of, to enable the matter to be canvassed again by way of an application for reconsideration out of time.
15. However, although the claimant asserts in her application that she has discovered that the respondent altered evidence in the bundle and tailored witness evidence after the original hearing, it is self-evident that she has not recently discovered any such thing. She was making the same points some 8 months ago to the EAT. Any implied suggestion that this is recently discovered evidence is, on that basis, disingenuous. The need for finality in litigation and the 14 day time limit both underline the need for such applications to be made promptly.
16. Moreover, all the matters raised in the claimant's application, which she clearly thought were relevant to be raised in the EAT, were matters germane to any appeal. Had His Honour Judge Peter Clarke considered it appropriate he could have directed that an application for reconsideration in respect of one or more of these points should have been made to the tribunal at that time.
17. Taking all these matters into account I consider that there is no reasonable prospect the original decision being varied in the interests of justice. It appears to me that this further iteration of the same points by the claimant strongly suggests that this is just such an application as Simler P was describing in the paragraphs quoted above in the case of **Liddington**.

18. For all those reasons I refuse the application for reconsideration.

Employment Judge T Ryan

Date 25 August 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 September 2017

FOR THE TRIBUNAL OFFICE