EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs I Bazalikova	**v**	**CEVA Logistics Limited**

JUDGMENT

1. The claimant's application dated 2 October 2017 for reconsideration of the judgment sent to the parties on 18 September 2017 is refused, pursuant to rule 72(1) of Employment Tribunals Rules of Procedure 2013.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, because:-

    1.1 The claimant's application for reconsideration is in respect of the order for costs only. No request for written reasons has been made by the claimant. However, oral reasons for the costs order were given to the claimant at the hearing.

    1.2 In summary, we concluded that the claimant's claims of race and religious discrimination had no reasonable prospects of success. That is a ground for an order for costs under rule 76(1)(b) of Employment Tribunals Rules of Procedure 2013. Further, Judge Adamson at a preliminary hearing on 31 March 2017 found that the claims of discrimination on grounds of religion and belief had little reasonable prospects of success and ordered the claimant to pay a deposit if she wished to continue to pursue them. Thus, for the purposes of rule 76, the claimant must be taken as having behaved unreasonably in pursuing the religious discrimination claims – see rule 39(5)(a). Judge Adamson considered the race discrimination claims to be borderline, but declined to order a deposit in respect of them. However, we heard and read the evidence, and it was clear to us that such claims never had reasonable prospects of success. We therefore ordered the claimant to pay the legal costs of the respondent incurred in defending those claims, amounting about a third of the respondent's total legal costs from the date of the preliminary hearing. We concluded that the

claimant should not have to pay the costs of the respondent's defence of the constructive unfair dismissal claim, as we were not satisfied that that claim had no reasonable prospects of success. The claimant was therefore ordered to pay the sum of £7,000 in costs. However, the respondent had written costs warning letters to the claimant and she had also refused an offer of settlement of £3,000 in July 2017.

2. We did not reduce the award of costs to take into account the claimant's means. Although her means are currently very limited, she has residual earning capacity and – childcare commitments allowing – should be able to work and earn in the future. It is entirely a decision for the respondent if they wish to defer pursuing the claimant for costs until such time as she can reasonably afford to pay them. It is important to stress that a claimant with a totally unmeritorious claim, such as the discrimination claims here, should be aware that she cannot pursue such claims with impunity, ignoring deposit orders and costs warning letters, and rejecting sensible offers to settle. The respondent has been put to considerable expense in defending these unmeritorious claims, and it is only right that the claimant should have to pay their legal costs of having to do so. Rule 84 does not say that we must have regard to the paying party's ability to pay. It says that we may have regard to that ability. We have considered the claimant's means, and we do not conclude that they prevent us from making the costs order that we have made.

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Employment Judge G P Sigsworth

Date: ……20/10/17……..

Sent to the parties on: .....

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For the Tribunal Office