



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 7 September 2017. That was itself a judgment on an application for reconsideration by the tribunal of an earlier judgment ordering the claimant to pay the respondent's costs. The previous history of this litigation is summarised at the beginning of the tribunal's judgment of 12 June 2017 and does not need to be repeated here.
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. In this further application for reconsideration the claimant makes the following points:
- 6.1. that parts of the claimant’s submissions were not referred to;
 - 6.2. that the tribunal did not describe the respondent’s “negative conduct”;
 - 6.3. that the tribunal should identify the unreasonable conduct and the effect it had - **Barnsley MBC v Yerrakalva**;
 - 6.4. that the tribunal had no evidence for the conclusion it made about the claimant’s unreasonable conduct in its earlier judgment of 11 October 2016;
 - 6.5. that the claimant had not acted unreasonably because she had received advice from counsel who had prepared a skeleton argument and therefore the tribunal’s discretion to make an order was not triggered and thus the order was unlawful.
7. A tribunal is required to receive the submissions of the parties before it. It is required to form a judgment as to the submissions which have persuasive force

in coming to a conclusion. It is not required to set out extensively the submissions of the parties in every case. It is required to explain the basis upon which it reaches its conclusion. Sometimes that requires it to set out submissions in summary and on other occasions more fully.

8. The matters set out at paragraph 6.2 - 6.4 above do not relate to the tribunal's latest judgment. It is important to remember that the reconsideration judgment now under challenge was permitted to take place in order to ensure that the claimant could put before the tribunal full financial information. That is why in the later judgment the tribunal does not rehearse its earlier conclusions in relation to its discretion to make an order for costs. So in these respects the claimant is making an application for reconsideration significantly out of time.
9. In paragraph 7 application the claimant refers to having obtained advice on the merits of her case from counsel who had drafted a skeleton argument to submit to the tribunal on 12 June 2017. The claimant asserts that because she had done that she could not be taken to have acted unreasonably by the tribunal when it reached that conclusion in October 2016. The persuasive force of this point is not apparent.
10. If there are any merits in these points in my judgment they do support an application for reconsideration. The claimant appears to be arguing that the tribunal erred in law in making its latest judgment. If so, that is a matter that could be canvassed before the Employment Appeal Tribunal.
11. Taking all these matters into account I consider that there is no reasonable prospect the original decision being varied in the interests of justice. In my judgment this is, again, such an application as Simler P was describing in the paragraphs quoted above in the case of **Liddington**.
12. For all those reasons I refuse the application for reconsideration.

Employment Judge Tom Ryan

Date 28 September 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
29 September 2017

FOR THE TRIBUNAL OFFICE