



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms SR Idu**

**v**

**The Ipswich Hospital NHS Trust**

## JUDGMENT

The Claimant's application dated 27 September 2017 for reconsideration of the judgment sent to the parties on 14 September 2017 is refused.

## REASONS

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

The Claimant's application is difficult to follow and repetitive. The key points are set out in the following paragraphs.

The Claimant complains that the Tribunal failed to consider whether there was a breach of the (contractual) disciplinary procedure. In particular, she says that the panels for the disciplinary hearing and appeal hearing were not properly constituted, and that the distinction between professional and personal misconduct has been abolished. It is correct that, in the Department of Health's document 'Maintaining high professional standards in the modern NHS', it is said that a key change is that the distinction between personal and professional misconduct is abolished. It goes on: "Doctors and dentists employed in the NHS will be disciplined for misconduct under the same locally based procedures as any other staff member". The Claimant was disciplined under the Trust's locally based disciplinary policy and procedure, and general rules of conduct for Trust staff. The panels were correctly constituted under that procedure, for misconduct. The Claimant's dismissal was not a capability dismissal and therefore did not require a panel constituted for that purpose, under the MHPS process or otherwise.

The Claimant states that the Tribunal made an error of law in not following the case of Mattu v University Hospitals of Coventry and Warwickshire NHS Trust [2012] IRLR 661, CA. In fact, the Tribunal did follow the majority decision which

concluded that the Trust in that case had not been obliged to have an independently medically qualified person on the disciplinary panel, as the allegations against Dr Mattu had raised no questions of professional misconduct. The issue that the Trust had to consider did not involve any medical skill or expertise for its resolution. It was an employment or managerial issue. Similarly, the issue of whether Dr Mattu was “unmanageable” was not an issue in relation to which a medical qualification was relevant. That was the position also with the Miss Idu’s case before us. It was personal, but not professional, misconduct that the Tribunal was considering. In Mattu, Sedley LJ gave a dissenting judgment. We were not entitled to follow it.

The Claimant alleges that the Respondent broke the law in relation to the employment of so called “fake consultants”, and that this was the principal cause of the dispute that led to the Claimant’s dismissal. We found on the evidence that this was not the case. Although 19 protected disclosures were made out, they were not causative of the Claimant’s dismissal. The reason or principal reason for her dismissal was the cumulative acts of misbehaviour or misconduct by her, as we found and concluded. The Claimant is not entitled to ask us to revisit the evidence on this and find different facts and reach different conclusions, just because she does not like the original decision.

The Claimant also seeks to re-argue her case in the context of some of her complaints of sex discrimination. Secretarial support – the Claimant refers to an email from Mr Power to herself dated 28 April 2015. The email must be read as a whole. It is clear that Mr Power intended to sort out any discrepancy there was in the allocation of secretarial hours between the consultants. Mr Power’s evidence to us was that when Sue Tyler was not working for Mr Youssef, she worked for the Claimant on a job share basis with Kerina Richards in order to ensure that the Claimant received the same amount of secretarial resource as Mr Youssef. There was no evidence that any discrepancy had anything to do with gender. As far as Mr Youssef’s fixed clinics were concerned, then the reference on the website was to when he was a vascular surgeon, not an emergency surgeon. That was the unchallenged evidence of Mr Power. In so far as the Claimant challenges our findings and conclusions in relation to cases allegedly taken away from her and given to her male colleagues and their private lists, then the Claimant is simply seeking to re-visit the evidence and ask us to change our minds. She has not provided any good reason, such as misinterpretation or perversity, as to why we should.

Our conclusions on the causation issue in the context of the protected disclosures were clear and evidence based. We found that these disclosures were not causative of the Claimant’s dismissal or other alleged detriments. The Claimant has not provided any good reason as to why we should re-visit those conclusions.

The Claimant refers to paragraph 5(13) of the Reasons. By reference to the list of issues, we are concerned with detriments 16, 17 and 19. Reference should be made to the pleaded case in the second claim form and that list of issues. The Tribunal interpreted the pleadings as not including a complaint as to the outcome of the grievance process and the appeal, but simply to the procedural aspects,

and the personnel or composition of the appeal panel. We found that Mr Fenton conducted a proper investigation, albeit that the grievance outcome post dated by a few days the claimant's dismissal. The appeal panel (the same one as for the disciplinary appeal) was properly constituted.

The Claimant has not established that any new evidence that she wishes to introduce would satisfy the tests in Ladd v Marshall [1954] 3ALLER 745, CA. A party seeking to introduce new evidence must show that:-

- 1.1 The evidence sought to be introduced could not with reasonable diligence have been obtained for use before the original tribunal hearing.
- 1.2 The evidence is so relevant that it would probably have had an important influence on the result of the case, although it need not be decisive in itself.
- 1.3 The evidence is apparently credible, although it need not be incontrovertible.

The Employment Judge apologises to the parties for the delay in getting out to them this reconsideration decision. The Claimant's application for reconsideration was mislaid for a period of time.

\_\_\_\_\_  
Employment Judge G P Sigsworth

Date: 10.01.18.....

Sent to the parties on:

.....  
For the Tribunal Office