



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Done

**Respondent:** Tameside, Oldham & Glossop MIND

Employment Judge Tom Ryan

## JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration made on 5 December 2017 is dismissed.

## REASONS

1. This is an application for reconsideration of the judgment sent to the parties on 11 August 2017 and written reasons sent on 22 November 2017.
2. By that judgment and for those reasons the claimant's complaint of unfair dismissal was dismissed.
3. 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.
4. 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.
5. 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:
  - 5.1. 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;

5.2. 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

5.3. 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.

6. 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.”

7. In this application for reconsideration the claimant attaches and refers to photographs of text messages between herself and a colleague which she accepts were included in the bundle of documents which was put before me at the hearing. In summary, she contends that these were not legible and she says “I believe in my lack of employment law knowledge that what I believe I had to prove in court was not actually what I needed to highlight which I can now see in hindsight.”

8. Doing the best I can it appears to me that the claimant is saying that had she had a better understanding of what was required of her in the hearing she would have placed reliance upon the text messages and, had she done that, it would have been realised that the appropriate parts of the messages were not legible.

9. I have examined the photographs of the claimant has now sent. So far as I can see these are photographs of text messages that I did see and were legible at the hearing.

10. Even if that were not correct the claimant clearly recognise that these text messages might have some significance in the question of legibility of documents was a matter which could have been dealt with at the hearing if necessary.

11. Even assuming that the claimant had not produced such text messages at the time such that this was in effect an application to adduce fresh evidence then my conclusion would be no different. In summary, the test for the admission of fresh evidence is whether it is evidence which was not available to the parties at the time of the hearing. Clearly, this evidence was available.
12. 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 such an application as Simler P was describing in the paragraphs quoted above in the case of **Liddington**.
13. For all those reasons I refuse the application for reconsideration at this preliminary stage.

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Employment Judge Tom Ryan

Date 18 January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
18 December 2017

FOR THE TRIBUNAL OFFICE