EMPLOYMENT TRIBUNALS

Claimant: Ms A Kouchalieva

Respondent: London Borough of Tower Hamlets

Date: 25 January 2018

JUDGMENT

The claimant's application under Rule 71 of the Employment Tribunals Rules of Procedure 2013, dated **13 November 2017**, for reconsideration of the judgment sent to the parties on **31 October 2017,** is refused under Rule 72(1).

There is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Employment Judge Prichard, by letter of 28 November sought any comments from the respondent on the claimant's apparent reconsideration application. His intention was to elicit any comments they may have wished to make on the factual specifics mentioned there. In the event their brief response dated 19 December 2017 only gave details general observations on the reconsideration process.

2. The Judge notes, from the respondent, the claimant is apparently appealing to the Employment Appeal Tribunal against the judgment (although we have not been notified by the EAT to date). The tribunal is sending a copy of this judgment to the Employment Appeal Tribunal as well as to the parties.

<u>The Reconsideration Application</u>

3. To the extent that this is an application on "fresh" evidence, the *Ladd v Marshall* criteria for receiving "fresh evidence" on reconsideration are as follows:

i) The evidence has become available since the hearing and its existence could not reasonably have been known or foreseen.
ii) The evidence should be such that it would probably have an important influence on the result of the case.

iii) The evidence must be apparently credible though not necessarily incontrovertible.

It is doubtful if this is such a reconsideration application, and in any event the criteria are manifestly not met.

4. The claimant complains of the shortening of the time estimate for the hearing from 7 to 4 days (4th day was for the tribunal to compose a reserved judgment). This did happen due to unavailability of the full panel for all the days. In the event the claimant and her daughter Ms Peponi (who was also a witness), were given a proper and fair opportunity to present the claimant's case. Ms Peponi was conspicuously helpful throughout and seemed to have a good grasp of the issues. The tribunal commented on this in Paragraphs 41 & 95.

5. If the evidence and the submissions had not been complete, the tribunal would have had no hesitation in adjourning part-heard. As the tribunal had cut down the time estimate we would have had to make that up to the parties in some way. It was not necessary in the end. The claimant did not request it either.

6. It is not clear why claimant still could not be familiar with the bundle, as she collected it 10 days before the final hearing started. Most of the documentation would have already been familiar to her. If she had asked for a postponement of the hearing, that would have been decided, and recorded. She clearly did not.

7. The claimant then attaches links to Ofsted reports for the Phoenix School and Cherry Tree School. Plainly these do not meet any of the *Ladd v Marshall* criteria. Apart from that, the fact that incidents where restraint have had to be used had reduced by 50% over 2 years and the fact that the school is outstanding, are not going to impact on the tribunal's findings at Paragraphs 54-55 & 73-74 of the Judgment.

8. Employment Judge Prichard simply does not understand the point the claimant now makes about Emma Parker's statements. And how they might relate to any of the tribunal's conclusions. They do not look significant.

9. Nor does the judge understand the reference to Pamela Benham's possible disability and how that could possibly impact on any of the tribunal's findings or conclusions.

10. Finally the claimant goes into the statutory definition of disability. The tribunal and the respondent had that well in mind and the respondent agreed that the claimant had qualifying disabilities (See Paragraphs 22-23 of the Judgment). The Judgment is full of references to the medical situation throughout. This is surely nothing but an attempt to re-argue her case,

11. If it is the claimant's intention to re-emphasise the osteoarthritis in her knees and ankles (which was not agreed to be a disability), as it affected her ability to walk (See Paragraphs 56-60). It is too late to argue this. The tribunal made no finding, and was not asked to make a finding on whether arthritis of the lower limbs did amount to a disability. The tribunal concluded that these problems did not account for the claimant's 7 month absence from September 2016 to her

dismissal. Only one of many sick notes mentioned arthritis of the knees. It is quoted at Paragraph 58.

12. Finally, the claimant attaches correspondence from the Benefits Office indicating she now receives Job Seekers Allowance and not Employment and Support Allowance, any longer. This might be relevant to Paragraph 93. However, looking at the correspondence, this development occurred after the hearing, and it was anyway a very marginal factor in the evidence upon which the tribunal came to its conclusions.

13. It is telling that the claimant does not refer to the Judgment itself at any stage and the Judge has had to look up these references, after guessing what the claimant's point is, where he could. It gives the impression that this is nothing more than an attempt by the claimant to re-argue her case.

14. For all those reasons the reconsideration application fails in its entirety. It would not be appropriate to hold a hearing. The application is plainly bound to fail.

Employment Judge Prichard

25 January 2018