Case Nos: 2401643/2017
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EMPLOYMENT TRIBUNALS

Claimants: 1. Mrs P Bhatia
2. Mrs P Booth
3. Mr N Asani

Respondents: 1. Dr Anant Prasad t/a Shanti Medical Centre
2. Dr Shaista Hanif t/a Shanti Medical Centre

RECONSIDERATION JUDGMENT

Dr Hanif's application dated 7 February 2018 for reconsideration of the judgment sent to the parties on 24 January 2018 is refused.

REASONS

1. I have considered Dr Hanif's application for reconsideration of the judgment promulgated following the hearing on 10 and 11 January 2018. That application is contained in an email of 7 February 2018. I have also had comments from the claimants in a letter from their solicitors of 26 February 2018, and a further email from Dr Hanif of 27 February 2018.

2. In addition I have considered an email from Dr Prasad's solicitor of 16 February 2018 seeking correction of one sentence in paragraph 31 of the judgment. I deal with that issue in paragraphs 15 – 17 below.

3. I have prepared these reasons assuming that the reader has already read the judgment and reasons issued in January 2018. References to paragraph numbers are a reference to that document unless otherwise indicated.

Rules of Procedure

4. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application if I consider that there is no reasonable prospect of the original decision being varied or revoked. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

5. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the

overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

6. The importance of finality in litigation was emphasised by the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

> **"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 by 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."**

Discussion and Conclusion

Procedural matters

7. The application for reconsideration was made within time. Rule 71 requires it to be made within 14 days of the date on which the judgment was sent to the parties but under rule 4(3) that date itself is not counted. Time therefore expired at midnight on 7 February 2018; the application was sent at shortly before 3.30pm that day.

8. It was not copied to the other parties. That is a breach of rule 71. Under rule 6 I consider it just to waive that requirement because Dr Hanif is a litigant in person and because the other parties have now seen the application and have had an opportunity to comment on it.

Merits

9. Turning to the merits of the application, it appears to me to make four broad points.

10. The first point is that Dr Hanif was not on an equal footing with the other parties because she was unable to be legally represented. She says that she was unable to call on the partnership's legal expenses insurance indemnity because Dr Prasad declined to agree to that. I noted that Dr Hanif had access to legal advice earlier in the proceedings (until October 2017 when Irwin Mitchell LLP came off the record). Thereafter it would have been open to her to have arranged legal representation privately, or if that were not practicable to have attended the hearing to represent herself. Tribunals are familiar with hearings in which one party has legal representation and another does not, and it is part of the responsibility of the Employment Judge to ensure that in that situation the parties are on an equal footing. I do not accept that the absence of legal representation provides any basis for arguing that there cannot have been a fair hearing.

11. The second point is a related point: that Dr Hanif was unable to attend the hearing because Dr Prasad was doing so, and the Practice needed to remain open in order to provide a service to its patients. This point is developed into an assertion that the Tribunal was biased in favour of the claimants because it disregarded written evidence of Anita Grundy and the written representations of Dr Hanif and accepted what the claimants said. This point is misconceived. I did not ignore what Ms Grundy and Dr Hanif said in written documents (see, for example, paragraphs 66, 71 and 104). I ensured the key points were put to the claimants and their evidence tested. Dr Hanif may not have appreciated that evidence provided in written form alone (particularly if unsigned) would be accorded less weight than if the witness attended the Tribunal to confirm the truth of that evidence on oath or by way of affirmation, and to answer any questions about that evidence, but that is information which could have been ascertained by taking some advice. Further, although I appreciate that Dr Hanif was in a difficult position in relation to the running of the Practice, she could have raised with the Tribunal her concerns about her ability to attend the Tribunal hearing and it might have been possible, for example, for the Tribunal to have assisted Dr Prasad and Dr Hanif to agree different dates during the hearing on which they would each attend to give their evidence. This point does not provide any grounds for reopening the case.

12. The third point made by Dr Hanif is to reiterate her case that the claimants had not made protected disclosures and that the dismissals were fair. Her case on this was already before the Tribunal in her written representations and I rejected it for the reasons which accompanied the judgment. There is no significant new evidence here and (applying what was said in **Liddington**) it is not appropriate to reopen this issue.

13. The fourth point is a request for the Tribunal to apportion liability between the two respondents. The Employment Tribunal has no power to do this. The respondents jointly employed the claimants and are jointly liable as their employer for the amounts which have been awarded. Whether apportionment is possible in the High Court is another matter.

14. Overall I am satisfied that there is nothing in the application for reconsideration by Dr Hanif which would make it in the interests of justice to re-open a matter which has already been decided. Dr Hanif had the opportunity to attend the hearing and put her case, and chose not to take that opportunity. Her case was put by way of written representations which were considered carefully. There is no reasonable prospect of the original decision being varied or revoked and the application for reconsideration is rejected.

Reasons Paragraph 31

15. Dr Prasad's solicitor emailed the Tribunal on 16 February 2018 to ask that paragraph 31 of the reasons be corrected. That paragraph referred to Dr Prasad and Dr Hanif having been partners since 2002. The email said that this was incorrect and that the status of the partnership was a matter currently in dispute. Unfortunately that email was not copied to the other parties and they have not had an opportunity to comment. Nevertheless I have considered it.

16. In preparing those written reasons I took that date from a reference in Dr Hanif's written submission of 27 December 2017 in which she said:

> **"I was a 50% partner in the business since day 1 of my joining the Practice in 2002."**

17. It would be wrong for that sentence in paragraph 31 of my reasons to be taken as a determination of this issue. It was simply recitation of the background. The two respondents were plainly in partnership (pursuant to the Partnership Deed of November 2013) by the time of the dismissals with which I was concerned. The date upon which the partnership began was not considered at the hearing.

Employment Judge Franey

1 March 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 March 2018

FOR THE TRIBUNAL OFFICE