



EMPLOYMENT TRIBUNALS

Claimant: Ms A Leader

Respondent: Bolton Council

Employment Judge Tom Ryan

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration made on 3 April 2018 is dismissed.

REASONS

1. This is an application for reconsideration of the judgment (including written reasons) sent to the parties on 19 March 2018.
2. By that judgment and for those reasons the claimant's complaints of disability discrimination and unfair dismissal were 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 has set out in a number of paragraphs a variety of matters. Although they are not numbered I have assigned paragraph numbers from 1 to 16. Using those numbers it is possible to group the various matters raised in the application in an appropriate way and thus to summarise the basis of the claimant's application.

7.1. The tribunal should reconsider the judgment because of the “severity of the punishment” by which the claimant means dismissal because of gross misconduct. Paragraphs 1, 2, 5 and 16.

7.2. The tribunal did not test the evidence of the respondent. Paragraphs 3 and 7.

7.3. The tribunal did not take into account of the claimant's submissions or afford her an opportunity to comment on those of the respondent. Paragraphs 4 and 15.

7.4. The tribunal did not take into account the “uniqueness of the claimant's treatment”. Paragraph 6.

7.5. The claimant was given short notice of the full hearing, it was not adjourned because of the claimant's medical condition. Paragraphs 8, 9 and 10.

- 7.6. The claimant had difficulties in conducting the hearing and her condition was not taken into account by the tribunal during the hearing. Paragraphs 11, 12, 13 and 14.
8. The matters set out in paragraphs in paragraphs 7.1 and 7.2 above, “severity of punishment” and not testing the evidence of the respondent, are not matters that it is appropriate for the tribunal to evaluate an application for reconsideration. They may be matters properly to be considered in any appeal.
9. As to paragraph 7.3 above, the process of the making and receiving of submissions by the tribunal is set out in paragraphs 30-32 of our written reasons. The claimant’s written submissions sent into the tribunal as she had requested on 8 December 2017 addressed all the complaints that she was making over seven pages. It is correct that she did not comment specifically on the respondent’s submissions but she did not suggest there that she did not have the opportunity to so had she wanted to do so.
10. As to paragraph 7.4 above, “the uniqueness of the claimant’s position”, this appears to be a matter which could have been addressed by the claimant in evidence and/or submissions. She did not do so. An application for reconsideration is not an opportunity to re-argue a point that was made at the hearing or to make a new point.
11. As to paragraph 7.5 above, the refusal to postpone the hearing, the background to that is set out in paragraphs 12 to 18 of our written reasons and the tribunal’s reasons for refusing to postpone are set out at length in paragraphs 19 to 29 of the written reasons. I note that the application for reconsideration does not contain any specific criticism of the tribunal’s reasoning for those case management decisions. The application now made is effectively an application that the tribunal should come to some different conclusion based upon an inference that the GP’s letter provided to the tribunal was in some way inadequate or wrong. There is no proper material upon which a tribunal could do so by way of reconsideration.
12. As to paragraph 7.6, it is necessary to consider the paragraphs within the application for reconsideration in turn. In paragraph 11 the claimant says she was unfit. I accept that the claimant may have felt unfit. My impression, and I believe that of the non-legal members was that whilst the claimant, as a litigant in person, may have faced some difficulties we did not consider that she was not fit to conduct the proceedings. In paragraphs 12 and 13 the claimant says that she was not able properly to cope with being cross-examined or to cross-examine the respondent’s witnesses. As recorded in paragraph 30 of our written reasons the tribunal made adjustments which we consider to be reasonable to accommodate the difficulties of the claimant is a litigant in person who perceived that she was unwell.
13. Taking all these matters into account I consider that there is no reasonable prospect of the original decision being varied in the interests of justice. In my judgment the matters set out at paragraph 7.1, 7.2, and 7.4 comprise such an application as Simler P was describing in the paragraphs quoted above in the case of **Liddington**. I consider that the claimant has not provided any

sustainable basis upon which a tribunal properly directing itself could consider that it was in the interests of justice to reconsider the judgement, revoke it and order a fresh hearing.

14. For all those reasons I refuse the application for reconsideration at this preliminary stage.
15. Finally, I apologise for the length of time it is taken to find the opportunity to reconsider this matter and provide this written judgement. This has been due to the pressure of other judicial work.

Employment Judge T Ryan

Date 17 August 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

4 July 2018

FOR THE TRIBUNAL OFFICE