EMPLOYMENT TRIBUNALS

Claimant: Ms L Dean

Respondent: Education Partnership Trust

HELD AT: Manchester **ON:** 11 June 2018

BEFORE: Employment Judge Ross

REPRESENTATION:

Claimant: Not in attendance
Respondent: Not in attendance

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for a reconsideration of the judgment dated 30 January 2018 and sent to the parties on 8 February 2018 is not well-founded and fails.

REASONS

1. By a letter of 22 February 2018, the claimant sought a reconsideration of the judgment in this case. Two grounds were relied upon. The first ground was that the following section in the judgment was not justifiable given the conclusion set out in other parts of the decision:

> *"By reason of the principle in Polkey v A E Dayton Services Limited [1988] ICR 142, the Tribunal finds it inevitable the claimant would have been fairly dismissed in any event on the same date as her dismissal occurred and accordingly the Tribunal makes a nil award for compensation."*

2. The second ground was that the judgment concluded that both the compensatory award and the basic award should be reduced by 100%. It was alleged that this was not justified by the facts.

3. The power to reconsider a judgment is found at rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, schedule 1. This states:

> "A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision 'the original decision' may be confirmed, varied or revoked. If it is revoked it may be taken again."

4. Rule 72 sets out the process and notes:

> "…The Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the view of the parties on whether the application can be determined without a hearing."

5. Both parties replied to a request seeking their views as to whether this reconsideration could be determined without a hearing. Both parties requested the matter to be dealt with without a hearing.

6. I remind myself that the grounds of a successful reconsideration application are that the consideration is "necessary in the interests of justice".

7. It is common in litigation that a party who does not succeed in full considers it is interests of justice to have the decision reconsidered.

8. However, I remind myself that the "interests of justice" provision allows a discretion, which must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other party to the litigation and also to the public interest requirement that there should, so far as possible, be finality of litigation. (**Outasight VB Limited v Brown UKEAT/053/14**).

9. I remind myself that in that case it was held that cases which determined the meaning of "interests of justice" under the old 2004 Employment Tribunal Rules remained relevant.

10. The basis on which a reconsideration is sought in this case is firstly that I was not justified in reaching the conclusion that the claimant would have been fairly dismissed in any event for some other substantial reason on the same date as her dismissal occurred given the facts in this case.

11. This is no suggestion that there is new evidence now available, which was not available to the original Tribunal (which could not have been made available) nor that some sort of procedural mishap occurred in this finding being reached; it is simply suggested that I did not attach weight to the evidence which the claimant believes I should have done. That is not, in my view, a sufficient ground for reconsideration.

12. The second ground relied upon is similar. It suggests that my finding in the alternative that there should be a reduction of 100% to the basic and compensatory award is not justified by the facts. Once again there is no new evidence relied upon which could not have been made available to the original Tribunal. There is no

suggestion of a procedural mishap or administrative error. The argument is that I was wrong to reach the finding on the facts.

13. The Tribunal has regard to the overriding objection at rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The claimant had an opportunity at the original hearing to put the arguments, namely whether there should be any **Polkey** reduction and whether there should be any reduction for contributory fault.

14. The Tribunal has had regard to **Trimble v Supertravel Ltd [1982] ICR 440** and the submissions made by the respondent in their letter dated 23 February 2018.

15. Having regard to rule 70 of the Employment Tribunals Rules of Procedure, the overriding objective and the previous case law determining the interests of justice provision, the Tribunal is not satisfied that there is any ground to reconsider its decision.

16. Accordingly, the application for reconsideration is refused.

Employment Judge Ross

Date 11 June 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
4 July 2018

FOR THE TRIBUNAL OFFICE