



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Ms A Wysocka

v

DWHA Limited

## RECONSIDERATION OF JUDGMENT

The claimant has made an application dated 26 October 2018 for reconsideration of the tribunal's Judgment promulgated on 18 October 2018. I have reconsidered the Judgment in the light of the request and I have concluded that there is no reasonable prospect of the original decision being varied or revoked and I therefore refuse the application.

## REASONS

1. The claimant bases her request on the grounds that an earlier tribunal judgment in respect of a different claimant (Ms A) against the same respondent had accepted that Ms A was an employee, on the basis of Ms A's assertion in her originating application that she was employed by the respondent. Ms A stated that her employment continued until February 2018 and that she was employed as Account Director. The face of the judgment of Employment Judge Tayler states that no response was received from the respondent. His finding is therefore based only on Ms A's assertion.
2. We found as a matter of fact that, at the relevant time in August 2017, the only employee of the respondent was Parry Cockwell. This was based on his evidence which was not challenged. He agreed that other people worked in the business but they did so as freelancers or contractors. We found that the selection process in respect of the claimant's redundancy was not unfair because there was no appropriate pool from which to select employees as the claimant was the only Production Director.

3. The claimant relies on the doctrine of *res judicata* to submit that it was not open to us to make the finding that Mr Cockwell was the only employee because an earlier tribunal had found that Ms A was an employee at the relevant time and therefore it cannot be the case that Parry Cockwell was the only employee.
4. I do not accept that *res judicata* applies in this situation as the parties to the earlier case are not the same parties as in this case. In addition, in the earlier case, the Employment Judge who made the judgment had not heard any evidence from the respondent. We had the benefit of hearing evidence from the respondent, which was subject to cross examination.
5. Further, Ms A was not a Production Director, (the claimant's role) and therefore, if she was employed at the relevant time, she would not be in the pool from which a selection needed to be made to reduce the number of Production Directors from one to zero. As the respondent offered the claimant alternative employment as Account Director (Ms A's role) and was prepared to allow the claimant to suggest a role, the wider pool is not relevant.
6. I have therefore concluded that there is no reasonable prospect of my original decision being varied or revoked. I am not satisfied that it would be in the interests of justice to vary or revoke my decision.

12 November 2018

Employment Judge Davidson

ORDER SENT TO THE PARTIES ON

20 November 2018

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS