



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr E Vargo

**Respondent:** Kingston University Higher Education Corporation

## JUDGMENT

The claimant's application dated 23<sup>rd</sup> October 2018 for reconsideration of the judgment sent to the parties on 10<sup>th</sup> October 2018 is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because of the following:

1. In her letter to the Employment Tribunal dated 23<sup>rd</sup> October 2018, the Claimant has requested a reconsideration of the judgment of the Employment Tribunal which was sent to the parties on 10<sup>th</sup> October 2018. She challenges the Tribunal's findings as to her employment status prior to 1<sup>st</sup> September 2015 and asserts that she has continuity of employment from December 2014 onwards and thus the Tribunal has jurisdiction to hear her complaint of ordinary unfair dismissal. This is put on the basis that there is a mistake in the way the Tribunal has interpreted the facts and that there is new evidence.
2. In essence the Claimant raises the following grounds:
  - 2.1 There is new evidence which she has obtained from an ex-colleague found in an old folder which shows that she was a member of staff on the LS4008 Sport and Exercise Psychology module during the academic year 2014/2015.
  - 2.2 This shows that the Claimant contributed to the module which commenced on 12<sup>th</sup> January 2015, prepared lectures and seminars twice a week until 15<sup>th</sup> March 2015 as maternity cover for Dr Pummel. She further states that she submitted a claim form for the work done in January 2015 in February 2015 and for the work done on 2<sup>nd</sup> and 9<sup>th</sup> March in April 2015. On this basis she concludes that the gaps in

employment in March and August 2015 do not reflect a lack of employment but simply that she did not submit claim forms to the Finance Office.

- 2.3 This means that from the perspective of mutuality of obligation her continuous employment commenced in December 2014 when she started demonstrating Statistics for the Sport & Exercise Psychology Undergraduate course led by Professor Spendiff claimed in January as administrative and clerical hours, then when she co-taught Sport & Exercise Psychology from January to March 2015 and finally as a Research Assistant from 2nd April onwards.
- 2.4 On this basis she would have 2 years continuous employment commencing in January 2015 so as to bring her claim of unfair dismissal.
- 2.5 She in effect invites the Tribunal to vary its judgment so as to allow her claim of unfair dismissal to be heard.
3. Under schedule 1 rule 71 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, a Tribunal may on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked.
4. By rule 72, an Employment Judge shall consider any application under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. For the sake of completeness, rule 72 goes on to state that otherwise the Tribunal shall invite the other party to respond to the application and canvass the views of both parties as to whether it is possible to deal with the application without a hearing and then the Judge will form a view as to whether a hearing is necessary or not.
5. Having considered the Claimant's request and the document she has provided, I consider that there is no reasonable prospect of the original decision being varied or revoked. This is for the following reasons:
  - 5.1 It is unclear why the Claimant was not able to provide the documentary evidence either before or during the Tribunal hearing which took place over a number of days in April, July and August 2018. In any event the new evidence simply records that the Claimant was a member of staff on the LS4008 Sport and Exercise Psychology module during the academic year 2014/2015.
  - 5.2 The further detail that she has provided in her letter is in effect new testimony and there is no indication as to why she was not able to have said this in her evidence to the hearing at which she was represented by Counsel. In any event the new evidence at its highest merely embellishes what the Claimant said in evidence during the proceedings which is set out at paragraph 21 of the judgment in as far as it relates to the period January to March 2015. This relates to assignments that she undertook through the Staff Bureau, as stated at paragraph 22 of the judgment. The Tribunal heard no evidence as to mutuality of obligation and only the briefest of evidence about the assignment work undertaken

during 2015 and was not able to form a view as to whether this amounted to employment as an employee as stated at paragraph 22. The new evidence does not change that position.

- 5.3 Whilst the Tribunal did consider the position of the Claimant's fixed-term assignment as a Research Assistant which commenced in April 2015 and ended on 31st July 2015, it did not form a view on the nature of this employment because it simply did not provide the Claimant with the necessary two years' continuous employment as paragraph 24 of the judgment indicates.

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Employment Judge Tsamados

6<sup>th</sup> November 2018