EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: B

Heard at: Manchester **On:** 17 January 2019

Before: Employment Judge Ross
Mrs L A Buxton
Mr S T Anslow

REPRESENTATION:

Claimant: Not in attendance
Respondent: Not in attendance

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration is not well-founded and fails.

REASONS

1. The claimant made an application for reconsideration dated 19 June 2018. There has been a delay in hearing this application due to difficulties with the availability of members.

2. It was agreed this hearing would take place without the need for the parties to attend.

3. The claimant's application is listed with bullet points on two sides of A4 paper. The claimant then writes, “in addition to the reconsideration of this Judgment please consider my comments to the following specific points”. She then raises five further pages of comments.

4. The Tribunal is considering the claimant's application for reconsideration, namely the first two pages of her letter.

The Law

5. The Tribunal reminds itself that there is a power under rule 70 of the Employment Tribunals Rules of Procedure to reconsider a Judgment, but only where it is "necessary in the interests of justice to do so". This ground gives a Tribunal a wide discretion, but the case law indicates that it is very carefully applied. It does not mean that in every case where a litigant in unsuccessful he or she is automatically entitled to a reconsideration. The Tribunal reminds itself that it is not an opportunity for a" second bite of the cherry" for an unsuccessful litigant. The "interests of justice" mean the interests of justice of both sides.

6. The case law reminds us that some of the factors relevant in considering whether it is in the interests of justice to reconsider a case include:

- A decision wrongly made as a result of administrative error;
- Non receipt of notice of proceedings;
- Judgment made in the absence of a party;
- New evidence becoming available which was not available at the time of the original hearing.

7. The Tribunal also reminds itself that finality in litigation is in the public interest.

Conclusions

8. The Tribunal turns to each of the matters relied upon by the claimant. In the first paragraph of her application the claimant refers to a concern that:

> "I was at a disadvantage from the start of this case due to late and unreasonable serving of papers and statements. Against the Tribunal orders. I have complied with everything I should have done and feel this is very unfair of the Crown Prosecution Service/Government Legal. How can they be allowed to get away with conduct of this nature? Surely it undermines the integrity and trust that the public rely upon."

The claimant refers to various case management hearings before other Employment Judges.

9. The Tribunal reminds itself that this issue was dealt with at the outset of the hearing. The task of the Tribunal who heard this case was to consider, given the admitted late disclosure of document and witnesses statements, whether a fair hearing was still possible. The Tribunal considered the matter carefully and determined that it was. The first day of this hearing was spent by the Tribunal reading the documents and accordingly the Tribunal was satisfied that the claimant sufficient time to consider the witness statements and the evidence which had been disclosed. The Tribunal is not satisfied that this is a ground for reconsideration.

10. The next ground the claimant appears to rely upon is:

> "It was also made clear that DW had been before the Tribunal Court before. Judge Ross had a quick friendly chat as he sat down in the witness chair saying, 'you've been here before, haven't you Mr Ward?' What did this mean? Can you explain this relationship?".

11. For the claimant's information Employment Judge Ross does not know Mr Ward. She does not now and has not ever had any kind of relationship with Mr Ward. Employment Judge Ross, to her knowledge, has only dealt with one other case involving the Crown Prosecution Service, and that concerned a different region. To the best of her recollection, Mr Ward was not a witness in that case. Neither Employment Judge Ross nor the other members of the panel have any notes of this alleged interchange, neither does the respondent. The Tribunal notes that the claimant is a litigant in person who was not sufficiently well to represent herself at the hearing and this task was ably conducted by her husband. If there was any interchange between Employment Judge Ross and witness DW it appears the claimant has misunderstood it. In any event it is entirely unclear how any alleged bias, which is strongly refuted by the Employment Tribunal, has any bearing on the decisions made by the Employment Tribunal. Accordingly, the Tribunal is not satisfied this is a ground for reconsideration.

12. The next ground relied upon by the claimant is her understanding that the respondent's barrister was ordered by Employment Judge T Ryan at a case management hearing on 12 December 2017 to ensure that she be paid her 13 weeks' notice pay. The Tribunal finds this is a misunderstanding of the process by the claimant. A case management hearing is to discuss preliminary issues and make Case Management Orders. It is not a final determination. It is only at the final hearing where all the documents are disclosed and the evidence is heard that a Tribunal is able to make a final decision. The Tribunal relies on its findings in the Judgment that the respondent is not required to pay the claimant notice pay. If the claimant disagreed with that finding she could appeal it. The Tribunal is not satisfied there is any ground for reconsideration.

13. The next ground is:

> "I believe my deteriorating mental disability was not recognised nor handled with an appropriate level of human compassion. Nor have the lifelong efforts of this been valued."

The Tribunal is not entirely clear what the claimant is saying. If the claimant is alleging that the Tribunal did not recognise her deteriorating mental ability or did not handle her case with an appropriate level of human compassion it strongly refutes the suggestion. The Tribunal was very concerned throughout for the claimant's wellbeing. The claimant was afforded frequent breaks. In addition, the Tribunal ensured that medical attention was obtained for the claimant when she became unwell from the Tribunal's first aider, and suggested to the claimant that it may be appropriate, if he was willing, for her husband to represent her given the state of her health at the relevant time.

14. If the claimant is referring to the respondent, the Tribunal took into account the relevant legal issues and applied the law to the facts as set out in its Judgment. The Tribunal is not satisfied this is a ground for reconsideration.

15. The next ground relied upon by the claimant appears to suggest the Tribunal's findings in relation to her possible return to work are incorrect. There was no new evidence supplied to the Tribunal. The Tribunal has to make a decision on the information before it, and the Tribunal stands by its findings of fact and the decisions on liability made on the basis of them. The fact that the claimant disagrees with the Tribunal's findings is not a sufficient ground for reconsideration.

16. The next ground is:

> "I feel that had I not requested the anonymity order then this would have been looked at and addressed differently as CPS would have been published on the internet and in the media domain. I enquire can this be reversed?".

17. The Tribunal strongly refutes the suggestion that it considered the claimant's case differently in the light of an anonymity order being granted. The Tribunal considered the evidence of the parties, found facts and then applied the law to the facts.

18. The Tribunal was concerned for the claimant. We refer to paragraph 221 of our Judgment. We raised the issue of an anonymity order. We gave the claimant the opportunity to consider whether or not she wished to make an application for an anonymity order. Eventually she decided that she did. The respondent throughout, both at the time and now, is neutral as to the making of an anonymity order. The Tribunal considered the arguments raised by the claimant and granted the anonymity order. The fact that the claimant has now changed her mind is not a reason to reconsider the order.

19. The next ground relied upon is:

> "Regarding the chambers meeting on 24 April I merely seek further explanation and understanding of the court's processes. I would like a full explanation of what this meeting entailed and why it took place? Did Mr Taft see you in chambers on that day? (I seem to recall him saying he would do so on the day of submissions?) If so, why was this and why was I not party to this or informed? I accept if we are wrong about our concerns but feel if this has been the case then it is unfair."

20. The Tribunal finds that the claimant, a litigant in person, is struggling to understand the process. The Tribunal reassures the claimant that the meeting in chambers on 24 April 2018 was, as is usual, a meeting for the Tribunal to consider all the evidence, make findings of fact and apply the law to the facts to reach a decision. This what we did. The only people present at the "in chambers" meeting, which is a private meeting, were Employment Judge Ross and the panel members, Ms Buxton and Mr Anslow. No-one else was present and there was definitely nobody present from the respondent.

21. This is not a ground for reconsideration. The Tribunal simply followed its normal procedures.

22. The final point is:

> "I feel this Judgment is unbalanced and sides more with B resulting in a whitewash decision. I hoped that the CPS would look after me, give me a glimmer of hope, find a lifeline for the continuation of my successful 13 years' service and previous public service since leaving school in 1989, but I feel I was abandoned."

23. The Tribunal expressed its sympathy for the claimant. However, the Tribunal relies on its decision that the claimant was not unfairly dismissed by the respondent and they did not discriminate against her. It is almost inevitable that the unsuccessful party will feel that the final decision was unfair. The Tribunal is satisfied that it found facts, applied the law to the facts and reached the proper decision in this case. The fact that the claimant feels it is unfair is not a ground for reconsideration.

24. Accordingly, the claimant's application for reconsideration does not succeed.

25. The claimant makes various other comments. These do not form the basis of the application for reconsideration so the Tribunal makes no comment on them except to say the Tribunal made findings of fact on the evidence it heard. If the claimant considered that the findings of fact were inaccurate and such inaccuracies were significant so that the legal decisions made by the Tribunal are unsafe, she had the opportunity to appeal the outcome to the Employment Appeal Tribunal.

Employment Judge Ross

Date 28 January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

31 January 2019

FOR THE TRIBUNAL OFFICE