EMPLOYMENT TRIBUNALS

Claimant: **Mrs T King**

Respondents: **University of Derby**
Mr M O'Dwyer
Mr G Birch

JUDGMENT

The claimant's application for reconsideration is refused.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(1). The main reason for the decision refusing the claimant's application is that there is no reasonable prospect of the original decision being varied or revoked.

2. This case was settled at a judicial mediation in Nottingham on 26 September 2018 where I [Employment Judge Camp] was the judicial mediator. To the best of my recollection, the judicial mediation was my first and only substantive involvement in the case. I mediated another of the claimant's cases (2600517/2018, against Unison) at the same time and it settled too.

3. Judicial mediations have become a significant and very beneficial part of the employment tribunal process. They take place at what is, technically, a preliminary hearing in private under rules 53 and 56. At the start of all judicial mediations, the Judge gives a short talk or speech to the parties explaining the process. One thing that is covered is the importance of confidentiality and the fact that what is said and done during the mediation should not be discussed outside of it. The parties are asked to confirm that they understand and agree. All of that happened at the judicial mediation in this case.

4. There are a number of public policy reasons why what happens at any mediation – including a judicial mediation – should be kept confidential. Primarily, it is about providing the conditions that best promote settlement of disputes. At its core: a judicial mediation is simply a forum for settlement negotiations between parties to a tribunal claim; and the judicial mediator's role is simply to help those negotiations along. There is thought to be a public interest in people resolving their employment disputes without the stress, time, trouble, and expense of an employment tribunal trial. This is reflected in rule 3 and in the existence and role of ACAS. Mediation is a consensual process: people can't be forced to mediate

any more than they can be forced to negotiate. Experience suggests that people won't agree to mediate and that any mediation won't be successful (or, at least, are unlikely to agree and is unlikely to be successful) unless what happens at the mediation is confidential.

5. Given all this (and given that, in any event, I don't think it is necessary for me to do so), I do not propose to go into what happened during the judicial mediation in any detail; but I do need to refer to a few things.

6. I should stress that the duty of confidentiality attached to mediation concerns only what happens at and in connection with the mediation. The duty does not prevent anyone discussing outside of the tribunal anything else about a case or about the claimant's underlying allegations. There may be other reasons why they shouldn't discuss those things publicly, but they aren't anything to do with the confidentiality of the mediation itself.

7. At the judicial mediation in these proceedings: the claimant was present and represented by counsel – an experienced, independent barrister; the University and Mr O'Dwyer were also legally represented, with the same representatives as each other; Mr Birch was present but unrepresented (the University's representatives were not representing him); Unison were legally represented – separately from the University.

8. Part of the settlement agreements entered into at the end of the mediation was that the claimant's claims were, or would be, withdrawn and that I, temporarily moving from a mediator role to a conventional judicial one, would, there and then, issue judgments in open tribunal dismissing the claims under rule 52. I duly issued three judgments on the day in the presence of the parties' representatives. Everything about the judgments – their precise wording, down to how the parties were to be named on the face of them – was agreed by the claimant, through her barrister, and was, as I understood it, part of the terms of settlement.

9. The only other thing I will mention about what happened on the day is that I witnessed nothing that I would consider to be improper conduct by anyone who was there; and had I seen anything like that going on, I would have done whatever I could to address it, potentially including ending the mediation.

10. If a party is legally represented, in the absence of any indication to the contrary, the tribunal assumes that where the representative puts themselves forward as acting on their client's behalf and with their client's authority and consent, that that is indeed the case. If it isn't, that is a matter between them and their client (and, possibly, their set of chambers or firm of solicitors and/or their professional indemnity insurers and/or the relevant regulator).

11. Since the judicial mediation, the claimant has corresponded with the tribunal and has, I understand, made one or more complaints – not about me, but about others. My only involvement was rejecting what was deemed to be a reconsideration application in 2600517/2018, in February of this year.

12. What I am dealing with in these Reasons is a letter the claimant wrote to the tribunal dated 11 February 2019 and received around that date. The letter begins, "*I would like to make a formal request to have the following employment case reviewed by an independent Employment Judge*" and she then refers to case number 2600516/2018.[1] She puts forward three reasons for requesting a 'review': a concern that there has been a miscarriage of justice "*which has prevented serious issues from being exposed and placed in the public domain*"; "*The 'closing down' of these cases has ultimately allowed some serious and unlawful practices to continue*"; "*concerns around my legal representation*".

13. The employment tribunal's and an Employment Judge's powers are not unlimited; we only have the powers that Parliament has given to us, through pieces of legislation. Our role is to resolve particular types of disputes between people, predominantly between employees or workers and their employers, and to do so in accordance our Rules of Procedure. We do not have an inquisitorial or investigatory role; we are not a regulator; we have no kind of police function.

14. If a claimant withdraws their tribunal claim, then, by rule 51, "*the claim … comes to an end*" (subject to any application for costs etc., something that does not apply here). This means what it says, even if the claimant changes her mind shortly afterwards. If a claim is at an end, an Employment Judge has no power to re-open it.

15. The claimant has asked for a review. The thing within the Rules that comes closest to a review of some kind and that an Employment Judge has the power to do is reconsideration. Reconsideration only applies to judgments. The only judgments that any Judge has issued in this case are my judgments referred to in paragraph 8 above. Those judgments are the only judicial decisions of any kind I have made in case number 2600516/2018.

16. Where practicable – and it is practicable here – any application for reconsideration must be considered by the Employment Judge who made the original decisions, i.e., in this instance, by me.

17. As the judgments were made by consent there were no Reasons for them. Had I given Reasons, I would have said I was issuing the judgments because: all of the parties – through their representatives, in the case of everyone who was represented – asked me to; rule 52 applied.

18. Rule 64 is the rule that deals with consent orders and judgments. It states that, "*If the parties agree … upon the terms of any … judgment a Tribunal may, if it thinks fit, make such ... judgment*". The use of the phrase "*if it thinks fit*" indicates that there is a discretion as to whether to issue a judgment. However, in the present case I was being invited to give judgments by consent further to settlement agreements entered into following judicial mediation and there was nothing inappropriate about the wording or content of the proposed judgments.

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[1] She also mentions, but does not ask for a 'review' of, 2600517/2018 and a case I have had no involvement in and which was, I understand, dismissed upon withdrawal under rule 52 by a different judge in July 2018: 2600696/2018. What I have to say about 2600516/2018 would apply equally to 2600517/2018 and much of it would also, I suspect (although I don't know for certain as it is not my case), apply to 2600696/2018.

In these circumstances, I think I could only have exercised my discretion properly one way: by issuing the judgments.

19. Rule 52 states that where a claim has been withdrawn, the Tribunal "*shall*", i.e. must, issue a judgment dismissing it except in two situations, "*(a)*" and "*(b)*". (a), which is the situation where a claimant has said when withdrawing that they don't want the claim dismissed because they want to bring a similar claim, did not apply. (b) is where, "*the Tribunal believes that to issue such a judgment would not be in the interests of justice*". There was nothing that could have led me to believe that issuing judgments under rule 52 would not be in the interests of justice – quite the opposite.

20. Is there anything the claimant has written to the tribunal since the judicial mediation that makes me wonder whether I was wrong to issue the judgments? I am afraid the answer is: no. This is mainly for three reasons:

    20.1 the judgments I made were made with the claimant's consent as part of settlement agreements at a time when she was legally represented;

    20.2 that the claimant now, evidently, regrets agreeing to settle the case and believes she was let down by her legal representative does not alter what she agreed and does not provide a valid basis for undoing the settlement agreements;

    20.3 even if I set aside the judgments, this would not mean the case could be re-opened. Rule 51 would still apply and the claim would still be at an end.

21. I therefore refuse the claimant's reconsideration application.

22. One further thing that would have been relevant if I had thought this reconsideration application was of some potential merit is the fact that the claimant made the application very significantly outside of the 14 day time limit. I would have to have been given a very good reason for extending time to that extent, and I have not been given one.

Employment Judge Camp

10 April 2019

Sent to the parties on:

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For the Tribunal:

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