



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Johnson

Respondents: 1. Mental Health Care (UK) Limited
2. Mental Health Care (Newton House) Limited

JUDGMENT

The claimant's application dated 24 October 2018 for reconsideration of the judgment sent to the parties on 24 May 2018 is refused.

REASONS

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

1. The claimant made an application dated 24 October 2018 "for strike out of respondents' witness statements and evidence". The application was made "to allow the Tribunal to consider this evidence and to decide if this evidence warrants for the respondents' witness statements and evidence to be struck out; and if prejudice has been caused by the Respondent". The claimant agreed that it should be treated as an application for reconsideration of the Tribunal's judgment.
2. The application was made following evidence given in the High Court of Justice in a case involving as plaintiff the first respondent to these proceedings and three defendants, one of whom was Dr Devan Moodley who gave evidence for the claimant before this Employment Tribunal. According to the claimant's application, Mr John Bromfield gave evidence under oath in both the High Court and the Employment Tribunal which involved him giving directly conflicting witness statements and sworn evidence in the two sets of proceedings.
3. The claimant was present when Mr Bromfield gave his evidence in both cases and she subsequently produced to the Tribunal a transcript of the High Court proceedings pointing to the particular paragraphs of Mr Bromfield's evidence which were of concern to her.

4. According to the claimant:

“It is averred that the respondent has deliberately provided sworn witness statements and evidence or withheld evidence in this case which has been wholly incorrect, factually inaccurate and/or contextually misleading to cause prejudice in this case. This application is made to allow the Tribunal to consider this evidence and to decide if this evidence warrants for the respondent’s witness statements and evidence to be struck out; and if prejudice has been caused by the respondent.”

5. The claimant subsequently amplified her application in writing and the respondent has responded to it in writing.

6. The parties agreed that the application could be considered in writing and without a hearing.

7. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provides that:

“A Tribunal may, either on its own initiative 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 may be confirmed, varied or revoked. If it is revoked it may be taken again.”

8. Rule 71 provides that:

“An application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties...and shall set out why reconsideration of the original decision is necessary.”

9. As to process, rule 72(1) provides that:

“An Employment Judge shall consider any application made 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...”

10. The test relates to the “interests of justice” allowing for a broad discretion albeit one that must be exercised judicially having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other parties to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

11. Where the basis of the application is that there is new evidence the test laid down by the Court of Appeal in **Ladd v Marshall [1954] 3 All ER 745** remains applicable:

- (1) Could the evidence have been obtained with reasonable diligence for use at the original hearing?

- (2) Is the evidence relevant and would it probably have had an important influence on the hearing?
- (3) Is the evidence apparently credible?

12. The Tribunal's judgment was that the claimant had made a number of protected disclosures but that she was not subjected to any detriment done on the ground that she had made them and that the principal reason for her dismissal was not that she had made them. The Tribunal did, however, find that the claimant was employed on like work with comparator B from 15 March 2015 until 2 May 2016.

13. From the transcript of Mr Bromfield's evidence in the High Court provided by the claimant it relates to the refurbishment of New Hall Hospital and the question as to whether Mr. Bromfield or Dr Moodley led on the restoration work.

14. This evidence clearly could not have been obtained with reasonable diligence for use at the original hearing as it did not exist.

15. Mr. Bromfield's statement for this Tribunal told us that he led on the large 18-month restoration project at New Hall and he confirmed this under cross examination.

16. Under cross examination in the High Court Mr. Bromfield stated that he led on aspects of the refurbishment because he was the hospital manager "but that is not the person that is leading". He accepted that Dr Moodley was leading on it.

17. Is this evidence relevant to the matters that were the subject of the claimant's claims before this Tribunal? In my judgment it does not affect the Tribunal's finding for the claimant that she was employed on like work with comparator B but not with comparator A and it does not affect the findings made by the Tribunal against the claimant in respect of the other issues before us for which the evidence given by Mr Bromfield was not determinative.

18. Having concluded that the evidence would not have had an important influence on the hearing I shall not go on to consider the question of its credibility.

19. The claimant's application provides no basis upon which to make a finding that the evidence given by the respondents should be struck out or that prejudice has been caused by the respondents.

Employment Judge Sherratt

10 May 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

20 May 2019

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