EMPLOYMENT TRIBUNALS

Claimants: **Miss H Kalaya**

Respondents: **(1) Wimbledon Broadway Specsavers Limited**
(2) Mr Andrew Kemp
(3) Miss Mahika Jayasena
(4) Mrs Sherrie Yates
(5) Mr Richard Sandiforth
(6) Mrs Daniella Mann
(7) Miss Cheher-Bano Kashmir-Ali
(8) Miss Anoushka Desai
(9) Mr Peter McCrory

RECONSIDERATION JUDGMENT

1. The Claimant's application made on 7 and 14 June 2019 for a reconsideration of the judgment dated 31 May 2019 has no reasonable prospects of success and is dismissed.

REASONS

1. The Claimant had presented numerous claims. Following the full merits hearing that took place on in December 2018 The Tribunal reserved its decision. Following a second 'in chambers' day on 8 February 2019 we prepared our written judgment and reasons which were dated 31 May 2019. We allowed the Claimant's unfair dismissal claims but dismissed all of her other claims (in excess of 200).

2. On 7 June 2019 the Claimant send an application to the Tribunal. She asked for:

    2.1. A reconsideration of the judgement in respect of the claims we had dismissed; and

    2.2. Permission to bring perjury charges against some person(s); and

    2.3. Disclosure of documents (the Joint Venture Partnership Agreement).

3. On 14 June 2019 the Claimant sent a further document which I have treated as including further information that she wishes me to consider on the application for a reconsideration.

4. It is not the function of an employment tribunal to give a party permission to being charges of perjury and we cannot do so. The Claimant might note that we did not make any findings that any witness was dishonest.

5. The Claimant has not identified any relevance of the documents she seeks. I do not accept that the terms of the agreement between the company operating a particular branch of Specsavers and the company with whom it has a joint venture partnership have any bearing on any aspect of the Claimant's case. In the circumstances the Tribunal will not make any further orders for disclosure.

6. The Claimant's application for a reconsideration is sometimes difficult to follow. At times she appears to be thanking the Tribunal for its decision and seems satisfied with her limited success. At other times she makes severe, and on our findings, unjustified criticism of the Respondents. She is not clear about what parts of our decision she does or does not agree with.

7. The Claimant does not point to any particular claim but invites us to review the entirety of our judgment.

8. I have done my best to understand the points that the Claimant makes. And have identified two themes. The first appears to be a suggestion that we should have accepted that her version of events was more likely than any of the Respondent's witnesses. The second is included in an abundance of caution but it seems that the Claimant is complaining of the conduct of the Respondent's witnesses during the hearing.

<u>The rules</u>

9. The Employment Tribunal Rules of Procedure 2013 as amended set out the rules governing reconsiderations. The pertinent rules are as follows:

   "Principles

   70. - A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

   Application

   71 - Except where it is made in the course of a hearing, 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 or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) 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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

10. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in ***Ministry of Justice v Burton and anor*** **[2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

    "the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

11. In ***Liddington v 2Gether NHS Foundation Trust*** **EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

    "a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited

exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

12. Any preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. That principle militates against permitting a party to reargue matters that have already been considered or referring to evidence which could or should have been considered at the earlier hearing.

13. In accordance with the Employment Tribunal Rules of Procedure I must reconsider any judgement where it is in the interest interests of justice to do so. Further, if I considered that there is no reasonable prospect of the original decision being varied or revoked I must refuse the application for reconsideration.

Discussion and Conclusions

14. The Claimant's application appears to be an invitation for the Tribunal to revisit the evidence that we heard and come to different conclusions. She does not produce any new evidence and certainly does not refer to any evidence that could not have been deployed at the hearing.

15. The Claimant does not appear to have any criticism of the manner in which the Tribunal hearing was conducted by the Tribunal. She does criticise the Respondents' body language. She made no complaint of this during the hearing and in fact at one point insisted that the Respondents remain in the room (when an offer was made for them to stay outside). I am of the view that every accommodation that the Claimant needed to accommodate her ill health was made for her. As such I do not consider that any arguments about procedural matters have any reasonable prospects of success.

16. I suspect that the Claimant has possibly misunderstood the scope and purpose of seeking a reconsideration. As set out above any decision of a tribunal is final unless it is in the interests of justice to re-open it. It is not in the interests of justice to reopen a judgment to rely upon the same facts and to make the same arguments. That is what is referred to in ***Liddington*** as having a second bite of the cherry. As the Tribunal has considered all of the evidence and listened carefully to the arguments of the parties the principle of finality means that we should decline to do so for a second time.

17. For the reasons set out above I find that the Claimant's application for a reconsideration has no reasonable prospects of success and I dismiss it without a hearing.

Employment Judge John Crosfill

17 June 2019