EMPLOYMENT TRIBUNALS

Claimant: Miss E Scott

Respondent: Alder Hey Children's NHS Foundation Trust

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the reserved judgment sent to the parties on 6 November 2019 after the Preliminary Hearing on 23 October 2019. The grounds are set out in her 8-page letter dated 14 November 2019, received at the Tribunal office on 18 November 2019 within the relevant time limit at Rule 71 of the Employment Tribunal Rules of Procedure 2013.

2. The claimant's letter was copied to the respondent. No representations have been received or sought from the respondent.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

4. The claimant's main grounds for applying for reconsideration appear to be:

   1) She had asked for clarification of the Unless Order in respect of medical consent and disclosure, which she was waiting for and did not receive until the Preliminary Hearing on 23 October 2019.

   2) She had included as many complaints as possible in her claim to the Tribunal and believed the Judge agreed that there was evidence for both ageism and sexism at the first case management hearing but these were not dealt with at the second hearing. When it looked like the discrimination claim would fail at the first hearing, she had to pursue her most important claim

relating to whistleblowing and she did provide the information in relation to that claim.

3) She was told that both of the hearings were case management meetings and not actually hearings.

4) She challenged the respondent's presentation of its application to strike out her claim at the 23 October hearing and she questioned whether the tribunal had been shown an exact copy of her card and why it was only relied upon by the respondent in seeking strike out much later. She felt that the respondent's representative misled the hearing about the content of the February email. She sought to give much fuller explanations of the email and card in the context of other correspondence she sent to the respondent's Chief Executive and to explain that the reference to murder should have been to "attempted murder" in relation to herself and was not a reference to the Alfie Evans case. She considered the respondent had not contested her descriptions of the whistleblowing activity, clearly realising that these would not fail at the hearing.

5. In her letter she made clear that her reference to acting upon legal advice was not correct:

> "…Throughout the proceedings, I have had to represent myself. My legal advisers are not actually qualified solicitors; the team has comprised various times, Mr Spock, Mr Google, Mr YouTube, Sheldon Cooper, Dr Gregory House, Dr James Wilson, Judges Roger Nowell and Nick Bannister, Marjorie Whitaker, George Malley, District Attorney Manuel Devalos, Detective Lee Scanlon, Sherlock Holmes, Alison and Joe Dubois, Mork and Peter Deuel. Most of these, except the last are fictional characters and the last one has been dead for over 40 years: I find I can rely on the advice of imaginary, dead people and fictional characters, because they do not have ulterior motives for misleading me…".

6. She indicated an intention to appeal and questioned whether the Tribunal had received all correspondence and documentation, expressing her concerns about phone and computer hacking and contending that the Tribunal could order police access to her email account, which she consented to. She expressly enquired whether the Judge had seen an email in which she apologised for the "one lie she told in 2018" and invited the respondent to own up to lies it had told in 2018, stating that if the Judge did not receive this email the import of the respondent's representative's reply to her about provision of medical consents would not have given the Judge any indication that he was not fully apprised of the case.

7. She concluded her application:

> "All of the above reasons lead me to believe that the judge should reconsider his verdict and, if necessary launch a full public enquiry into

> Alder Hey hospital. Better minds than mine need to look in these problems."

8. Context

In dealing with the application for reconsideration, the starting point is that the Preliminary Hearing on 23 October 2019 would not have been retained if the Judge had not directed that it remain listed. Since the Unless Order was not complied with in full, the dismissal of the whole claim under that Order took effect and the hearing would normally have been vacated and the proceedings closed. Recognising that he had not seen the claimant's letter dated 2 September 2019, in respect of medical consents and medical evidence, nor the claimant's further information about her protected interest disclosures and detriments dated 12 September 2019 before the date for compliance (13 September 2019), the Judge directed that a letter be sent to the parties both confirming the dismissal of the claim but also treating the claimant's letters as an application to vary the original Unless Order or for relief of the sanction imposed by it. The Tribunal sent this letter dated 4 October 2019 to the parties confirming that the Preliminary Hearing listed for 23 October 2019 (originally listed as a case management preliminary hearing under the Order sent out on 19 June 2019 but to which the respondent's application to strike out the claim had already been added) would go ahead.

9. Conclusion

The grounds raised by the claimant were considered in accordance with Rule 70. In dealing with the similar position of reviews under earlier Rules, the Employment Appeal Tribunal in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review (reconsideration). Even though there was no full hearing after the giving of evidence, the same principle applies that it is in the public interest that there should be finality in litigation. In essence, there needs to be some major and new aspect which which demands a reconsideration in the interests of justice.

10. Dealing with the claimant's 4 main grounds:

1) Ahead of the making of the Unless Order, the claimant had been provided with guidance about medical consents and evidence in the Tribunal's letter sending out the Case Management Order on 19 June 2019:

> "The claimant's two letters dated 6 June 2019 and letters dated 7 June 2019, 8 June 2019 and 10 June 2019 and a copy of the respondent's letter to the claimant dated 10 June 2019 have been referred to Regional Employment Judge Parkin.
>
> The REJ notes the contradictory messages sent by the claimant, reflecting a change of position on her part from being in "full disclosure

mode" which reflects her eventual position at the case management hearing and on 6 and 7 June 2019 and her next letter dated 8 June 2019, in which she refers to: "My legal advisers have counselled me not to consent..." to the provision of consent to disclosure of medical records.

The claimant will note from the Case Management Order which is being sent to the parties that the Tribunal did indeed order her to provide her consent and the medical authorities to provide disclosure to the respondent's solicitor on her behalf of the relevant medical evidence. She herself was ordered to provide an impact statement dealing with her condition.

Whilst, as she says, the question of consent to disclose medical records will be discussed at the next case management hearing, it is highly unlikely that the Tribunal will permit any disability discrimination claims to proceed if the claimant refuses to allow disclosure of the relevant medical evidence to the respondent. Leaving aside any arguments as to any effect upon the Tribunal's ability to hear the protected disclosure detriment and automatic unfair dismissal claims if the medical evidence is not disclosed, it is difficult to envisage how there could be a fair hearing of disability discrimination claims founded upon the respondent's actual or constructive knowledge of a perceived but as yet undiagnosed mental health condition without full disclosure of relevant medical evidence to the respondent, sufficient for its representative to take full instructions upon it including from the line managers involved.

Accordingly, the claimant is urged to take further legal advice or counselling from whoever is giving her such advice. As has been explained before, whilst the claimant is fully entitled to represent herself in these proceedings, she is also entitled to nominate anyone to act on her behalf as her representative…".

Although the Case Management Order did not describe the orders as made by consent, at the end of the hearing on 6 June 2019, the claimant did agree to provide medical disclosure as described at Paragraph 7 in the Discussion in that Order. It is correct that the Judge explained at the hearing on 23 October 2019 that he would not renew the Order for her to provide medical consents against her will but he also explained that, even if they were reinstated, the disability discrimination claims would be stayed until such consents were given since it could not be in accordance with the overriding objective for those disability discrimination claims to proceed when the claimant would not disclose her medical evidence.

Although the whole claim was dismissed because there had not been full compliance with the Unless Order, the Judge granted relief against

sanctions on 23 October 2019 since the claimant had provided the further information of her protected disclosure claims (in compliance with the first order within the Unless Order and in time) and made clear she was not pursuing reinstatement of the disability discrimination claims.

2) At paragraph 8 under Discussion in the Order sent out on 19 June 2019, after the earlier hearing on 6 June, the Judge expressly recorded the claimant's confirmation that she was not pursuing a claim of sex discrimination and did not seek to amend to include a claim of age discrimination.

3) The claimant was never told that she was to attend case management meetings. The Notices of Hearing and other correspondence all referred to hearings. The Notice of Preliminary Hearing – Case Management originally sent out on 19 June 2019, alongside the Tribunal's letter and Case Management Order that day, was followed by a new Notice of Preliminary Hearing dated 31 July 2019, to determine the respondent's strike out application. This was the hearing listed for 23 October 2019, which the Tribunal in its letter of 4 October 2019 confirmed had not been cancelled.

4) The claimant's more extensive explanations about her email letter and the card to the chief executive are very much seeking a "second bite of the cherry" after the hearing.

11. As to correspondence and documents, there has been extensive correspondence from the claimant to the Tribunal and it cannot confirm that every item of correspondence from the claimant has been referred to the Judge. It is acknowledged that the respondent did not seek to put the whole correspondence sent by the claimant at different times to its Chief Executive or other senior officers before the Tribunal at the hearing. Nonetheless, the Judge was satisfied that he had seen sufficient correspondence and in particular that he understood the claimant's contention that the February letter and June card were only part of a much fuller course of correspondence. The claimant's email dated 7 June 2019 in which she owned up to telling a lie in 2018 was expressly acknowledged by the Tribunal in its letter dated 19 June 2019 enclosing the Case Management Order and the respondent drew it to the Judge's attention with other correspondence at the hearing on 23 October 2019.

12. The claimant, albeit representing herself with limited knowledge of employment law and tribunal procedure, took her full opportunity to make her representations on 23 October 2019. Her very extensive letter seeking reconsideration confirms that it remains her view, going far beyond even her protected disclosure claims in these proceedings, that there should be a public enquiry into the management and medical practices at Alder Hey Hospital. This does not make it in the interests of justice to reconsider the Judgment.

13. Accordingly, pursuant to Rule 72(1) the application for reconsideration is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Regional Employment Judge Parkin

Dated 2 December 2019

JUDGMENT SENT TO THE PARTIES ON

5 December 2019

FOR THE TRIBUNAL OFFICE