



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H Ismail

**Respondent:** Debenhams Retail plc

**Heard at:** London South                      **On:** 25 November 2019

**Before:** Employment Judge Cheetham QC

## Representation

Claimant: Mr Onwudiwe (representative)

Respondent: Mr Perry (counsel)

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The application for reconsideration of the Judgment, whereby the claim for disability discrimination was struck out, is refused.

## REASONS

2. This is an application by the Claimant for reconsideration of the Judgment of Employment Judge Martin (14.10.19) that her claim for disability discrimination should be struck out for non-compliance with an unless order.
3. The application was received by the Tribunal on the day the claim was listed for the final hearing and I was due to hear the case. Where practicable,

reconsideration of a judgment should be done by the Employment Judge who made the original decision. However, it was not practicable for Employment Judge Martin to do so, as she was not available. It was not in the interests of the parties, nor would it have been consistent with the Overriding Objective of avoiding delay and dealing with cases proportionately, for the final hearing to be adjourned to allow her to do so.

4. Having discussed the matter with the Regional Employment Judge, I therefore proposed to the parties that I should consider the application and the Claimant's representative agreed. At this stage I did not hear any representations from the Respondent, but confined myself to the application from the Claimant. I asked the parties to leave the Tribunal room while I considered that application and then gave them my decision orally.

### **The Tribunal Rules on Reconsideration**

5. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

#### **70. Principles**

*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.*

...

#### **72.— Process**

*(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.*

## Conclusions

6. The grounds of the Claimant's application for reconsideration can be summarised as follows:
  - (i) the Employment Judge exhibited extreme bias and her conduct was dishonest, unlawful and morally bankrupt;
  - (ii) she conspired with the Respondent's lawyers to obstruct justice;
  - (iii) the London South Employment Tribunal is a corrupt institution, where one can hire a Judge to help one play the system; and
  - (iv) the claim for disability discrimination should not have been struck out, because the Respondent had been provided with supporting evidence about the Claimant's medical condition.
7. The personal allegations against Employment Judge Martin are, quite obviously, entirely without foundation or justification. I can only presume that they arise out of the Claimant's frustration at the decision, as there is nothing that would suggest to an objective, reasonable observer that the Employment Judge acted in any way that was improper. To my mind, the allegations of corruption and dishonesty levelled against her, as well as against the Respondent's lawyers and the Tribunal Service, are unfair, scurrilous and highly inappropriate.
8. I put all of the extreme and unfounded allegations to one side and asked myself whether there was any reasonable prospect of the decision to strike out the disability discrimination claim for non-compliance with an unless order being varied or revoked, because it would be necessary in the interests of justice to do so.
9. The Judge, in reaching her decision, had read all of the relevant documents, listened to the parties' submissions and found that there was material non-compliance with the Tribunal's order in several ways. I looked at the orders that were in place, the parties' correspondence with the Tribunal and the extent to which the Claimant had complied. It was quite clearly open to the Judge to conclude that there had been material non-compliance, whether or not the Respondent had been provided with supporting evidence about the Claimant's medical condition.
10. I note that in her application, the Claimant states, "*If a claim is defective as they suggest, it is a gift to the Defence*". That may be the case, but it demonstrates the Claimant's and her representative's failure to appreciate that the purpose of the unless order was to ensure that the claim was properly presented and not defective. Compliance was a requirement, not an option.

11. In my judgment, therefore, there is no reasonable prospect of the decision to strike out the disability discrimination claim for non-compliance with an unless order being varied or revoked and the application is refused.
12. After I had given my decision, the Claimant and her representative left the Tribunal and took no further part in the proceedings.

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Employment Judge Cheetham QC  
Dated: 2 December 2019