



EMPLOYMENT TRIBUNALS

Claimant: Ms S Bryan

Respondent: Travelodge Hotels Limited

JUDGMENT

The claimant's application dated 3 January 2020 for reconsideration of the judgment sent to the parties on 20 December 2019 is refused.

REASONS

1. These reasons are in four parts. First, I set out the relevant parts of rule 70 and 72 of the 2013 Rules. Second, I set out the basis of the application for reconsideration. Third, I set out the response to the factual allegations. Finally, I set out my conclusions.

Rules 70 and 72

2. On reconsideration, a tribunal's decision may be confirmed, varied or revoked – see Rule 70.
3. Rule 72 (1) of the Employment Tribunal Rules of Procedure 2013 states:

(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.

The basis of the application

4. The reconsideration review letter is based on the claimant, whilst waiting outside the tribunal room during a break, allegedly overhearing one of the lay

members Ms N Chavda saying that if she (Ms Chavda) was sexually harassed she would not have let anyone stop her from complaining. The claimant also allegedly heard Ms Chavda stating that nobody else had come forward from the workplace to support the claimant's claims of sexual harassment.

5. It is also alleged that during cross-examination of the claimant, the respondent's counsel Ms Urquhart became frustrated and said to the claimant 'be quiet'. It is further alleged that: 'The members of the panel looked up but did not say anything. Ms Urquhart apologised to the claimant, the claimant accepted this apology replying "okay". The cross-examination then continued'.
6. It is also stated in the letter that the claimant found the hearing a distressing experience and was upset to be called a liar by Mr Chris-Kuye, the man she accused.
7. It is argued that it is necessary in the interests of justice to reconsider the decision made by the tribunal and that a new hearing be listed in front of a new panel. This is on the basis that it would appear to a fair-minded and informed observer that there was a real possibility that the tribunal was biased, based on the 'deliberations which the claimant overheard'. This is said to be because those remarks 'suggested that one of the tribunal panel was bringing her own personal subjective view to bear on the claimant's behaviour in deciding a key finding of fact'.

Response to factual allegations

8. As for the alleged comments by Ms Chavda, I do not have any clear recollection of such comments being made. That does not mean they were not made however and for the purposes of this reconsideration decision, I will assume that the comments were made as alleged.
9. Such comments were not however made during any formal 'deliberations'. If they were made, they were made at an early stage in the proceedings. The formal deliberations took place at the conclusion of the evidence and submissions. Those deliberations involved the making of relevant findings of fact, considering the relevant legal principles, and then applying those to the facts, in order to draw our conclusions. That is exactly what happened in this case. There was no jumping to conclusions during that process or 'reverse-engineering' a decision that had already been made at the outset.
10. As for the alleged comments by Ms Urquhart, again I do not recall that happening. I have checked my notes, and there is no record of such comments being made. Again however, for the purposes of this reconsideration decision, it will be assumed that the incident took place as alleged. It is also noted that the claimant's representative did not make any comment about this incident herself, either at the time it occurred, or at any time thereafter, prior to judgment being delivered.
11. Finally, it is accepted that Mr Chris-Kuye suggested during his evidence that the claimant was lying. This is specifically mentioned in the written reasons on liability, which we will refer to below.

Conclusions

12. In relation to the first matter, as to whether or not one of the tribunal members was biased and brought their own personal subjective view to bear on the claimant's behaviour, it is important to stress first of all that the decision was made by a three-person panel, and was unanimous. I can state categorically that such comments, if made, did not form any part of the deliberations of the panel. On the contrary, it is specifically stated in the judgement at paragraph 25:

25. We consider it significant that in her appeal letter of 7 May 2018, Ms Bryan did not raise any specific allegations against Mr Chris-Kuye. We accept Ms Bryan's contention that during her employment she would have been reluctant to make any allegations of sexual harassment against Mr Chris-Kuye because she was in her probationary period and that had been extended. We see no reason why however, had there been significant issues with Mr Chris-Kuye's behaviour towards her prior to her dismissal, that those would not have been raised in the appeal letter of 7 May 2018, rather than those matters only being raised at the appeal meeting itself on 14 June 2018...

13. It is clear from this paragraph in the judgment that it was not the claimant's failure to raise matters at the time that we considered significant, but her failure to raise those matters after her employment had been terminated. Whatever view Ms Chavda may have had on the first day of the hearing therefore, that was clearly not the view of the panel at the time that the actual deliberations in the case took place.

14. As for the alleged outburst by Ms Urquhart, then based on what is stated in the reconsideration request letter, Ms Urquhart recognised that she had overstepped the mark, apologised and that apology was accepted. Whilst it would have been open to the panel to comment further, that would not be necessary in circumstances where it appeared that the matter had been dealt with. It is noted that the claimant's representative did not consider it appropriate to intervene further either.

15. As for the allegation by Mr Chris-Kuye that the claimant was lying, that was noted by the Employment Tribunal, and is specifically picked up in the judgment at paragraph 55 which reads:

55. We would like to make two concluding comments. First, in the midst of cross-examination, Mr Chris-Kuye suggested that the claimant was lying. It is easy to say such things in the heat of cross examination. Whilst we have found that in a number of respects, Ms Bryan appears to have reconstructed events after they have taken place, we are not in saying that suggesting that she has been a dishonest or untruthful witness. Memory is known to be unreliable, and in reconstructing matters after the event, witnesses can become convinced that their recollection is indeed correct. We consider that this is one of those cases.

16. Further, in our judgment on the costs' application, we stated:

3. The tribunal does not consider that the claimant acted vexatiously, abusively or disruptively in either the bringing of the proceedings or the way that it has been conducted. As for whether she has acted unreasonably in bringing or conducting the proceedings, again we conclude she has not. It is our view that her case was arguable. Discrimination claims are usually very fact-sensitive and this case was no exception. A full hearing was necessary in order to determine the issues.

4. *We note that the respondent's solicitors in their letter to the claimant of 28 March 2019 argued that the breach of contract claim had no reasonable prospects of success. The claimant succeeded in that claim at the liability hearing. We clearly do not agree with the respondent's assessment of that claim.*
5. *As for the sexual harassment claim, as we have indicated in the judgment given on 2 October, some of the matters were very finely balanced and gave us pause for thought, before we were able to arrive at our findings of fact and/or our conclusions. It is our view that the claimant did have an arguable case. The fact that we found against her does not mean that she has acted unreasonably in bringing or pursuing her claim.*
6. *We also take note of our specific finding that whilst in recalling these events, the claimant was in our view mistaken, she was not deliberately lying, or being dishonest. She clearly believed the case she put and still does.*
17. In arriving at our decision in this case, we carefully considered the matters before us. The decision was arrived at following a thorough review and analysis of the evidence, and the drawing of clear conclusions from it, based on the relevant legal principles. Ultimately, we did not find some of the claimant's allegations to be credible, for the reasons given in the judgment and touched on above.
18. Where we did find them to be credible, we carefully analysed them and considered whether a sexual harassment claim was made out. Matters were on some issues very finely balanced. At no point was the failure of the claimant to complain about Mr Chris-Kuye during her employment a matter which we took into account or which influenced our decision-making in any way whatsoever. Nor for that matter was the fact that none of her ex-colleagues came to give evidence in her support at the hearing (a situation that is not in any event unusual or surprising given that such potential witnesses might feel, rightly or wrongly, that their future employment could be in jeopardy if they did so).
19. Since there is in such circumstances no reasonable prospect of the decision of the Employment Tribunal in relation to liability being varied or revoked, the application is refused on the papers.

Employment Judge A James

24 January 2020

JUDGMENT SENT TO THE PARTIES ON

27th Jan 2020

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FOR THE TRIBUNAL OFFICE