EMPLOYMENT TRIBUNALS

Claimant: **Ms B Stankova**

First Respondent: **Atalian Servest Ltd**
Second Respondent: **Ben Hartley**

Employment Judge Shepherd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. A reserved judgement and reasons was sent to the parties on 9 January 2020. That judgment followed a hearing on 11, 12, 13, 14, 15, 18, 19, 20, 22, 25 November, 9 and 10 December 2019 with deliberations in chambers on 13 and 20 December 2019. The Tribunal unanimously concluded that the claims of race discrimination and disability discrimination against the first and second respondent were not well-founded and were dismissed.

2. An application for a reconsideration has been made by the claimant on 23 January 2020.

3. The application for a reconsideration refers to the respondent having not complied with the order for disclosure of documents by 20 September 2019. The claimant stated that the respondent did not put all of her documents related to the claims in the bundle and had added documents which had not been agreed. This was an issue that was raised during the Tribunal hearing. The claimant was given numerous opportunities to indicate what documents she alleged had not been included in the hearing bundle. This was a lengthy hearing with a number of delays. There was a large number of documents

within the bundle and the claimant provided her own additional bundle of documents at the commencement of the hearing. The claimant was given ample opportunity throughout the hearing to disclose to the Tribunal any further documents. She was unable to set out what further documents upon which she wished to rely.

4. The application for a reconsideration refers to the evidence given to the Tribunal and seeks to reopen consideration of that evidence. I have considered the very lengthy application from the claimant and I am satisfied that, although this was a difficult hearing, the Tribunal gave full consideration to all the evidence before it. The claimant was given as much time as was possible to prepare her questions and provide documents. The Tribunal took into account that the claimant was emotional and suffering from stress and that English is not her first language. The claimant was given breaks at appropriate times and allowed time to provide evidence when requested.

5. The Tribunal took into account the claimant's concerns with regard to the interpreter and was of the view that the issue had been resolved by ensuring that all questions and answers were provided through the interpreter at a suitable pace. The Tribunal was satisfied that the claimant was able to formulate questions and answers appropriately. It was only after the initial 10 days of the hearing that the claimant raised an issue in respect of the language of the interpreter.The Tribunal was provided with assurances from the organisation providing the interpretation services that the interpreter was fully qualified in Slovak and had a great deal of experience in interpreting. The Tribunal was satisfied that the claimant had been able to ask questions and understand questions put to her during the course of the hearing.

6. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

"70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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.

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.

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."

7. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a Judgment could be reviewed The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J in **Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

8. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

   "Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before".

   In the case of **Fforde v Black EAT68/80** where it was said that this ground does not mean:

   "That in every case where a litigant is unsuccessful is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order".

9. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/81** where it was stated:

   "When you boil down what is said on (the claimant's) behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, 'justice' means justice to both parties".

10. I have spent a considerable amount of time going through the very lengthy application for a reconsideration. In this case, the application for a

reconsideration appears to be a request to reconsider the evidence given at the hearing. The application refers to the quality of the evidence and the consideration of investigations carried out by the respondent. I understand that the claimant is unhappy with the judgment. She remains of the suspicion that the unreasonable behaviour she alleged and the management failings were because of her race, disability or victimisation because she had carried out the protected acts. However, the Tribunal gave lengthy and careful consideration and concluded that this suspicion was not sufficient to establish the something more that is required to show that there was an act unlawful discrimination.

11. The Tribunal hearing was lengthy and carried out with appreciation for and allowances made in respect of the claimant's emotional state and any language difficulties. The hearing was conducted in the interests of justice and the claimant had a reasonable opportunity to present her case, give her evidence and challenged the respondents'evidence.

12. The Tribunal took into account the appelate guidance and was not satisfied that the claimant had established facts from which Tribunal could conclude that there had been acts of discrimination.

13. The issues set out in the application for a reconsideration of the judgment do not raise any matters that are likely to lead to the Tribunal reaching any different conclusion.

14. I have considered this application carefully. I have reached the view that a hearing is not necessary in the interests of justice. There is no reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

13 February 2020

Sent to the parties on:

For the Tribunal: