



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Morris

Respondent: London Ambulance Service NHS Trust

RECONSIDERATION JUDGMENT

The Claimant's application dated 6th February 2020 for reconsideration of the judgment sent to the parties on 30th January 2020 is refused.

There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.

REASONS

1. The basis on which a Tribunal judgment can be reconsidered is where it is in the interests of justice to do so (Rule 70 Tribunal Rules 2013). This means in the interests of justice to both parties and taking into account the public policy requirement that there should, as far as possible, be finality in litigation. This means that when something has already been decided by a court or tribunal it should not be readily changed without good reason.
2. The initial test the Tribunal has to apply on a reconsideration application is to consider whether there is a reasonable prospect of the original decision being varied or revoked (Rule 72(1)).
3. The Claimant asked for a reconsideration on the following issues. In summary she disagreed with the Tribunal's findings of fact and decision but she did not provide any new evidence (ie evidence which was not available at the time of the hearing) to support why she said those findings of fact and conclusions were wrong.
4. The issue for the Tribunal at the hearing was to decide whether the reason the Claimant was not selected for the ECHS role was her part-time status. It was not to decide other matters where the Claimant felt poorly treated, unless that was relevant to deciding the reason why she was not selected for the ECHS role.

The method of assessment (paras 2 and 3 of reconsideration application)

5. The Tribunal found (judgment paras 11,12) that the Claimant was not disadvantaged by the assessment because it was the same for all candidates and was fair and transparent. The Tribunal found that with her experience, the scenarios tested were common ones she would have come across.

6. The Claimant made no criticism of the actual selection process, except that she did not pass (para 11).

7. The Claimant continues to assert that the process was not fair but the Tribunal has already decided that it was. The Claimant disagrees with the Tribunal's findings of fact as to the process but she has not produced any new evidence to support a reconsideration of those findings of fact.

Not knowing the assessment scores until November 2019 or the pass mark until December 2019 and delay in feedback meaning no opportunity to challenge the scores (paras 4 and 5 of reconsideration application)

8. The Claimant's case was that she had not been selected because of her part-time status and the Respondent's case was that she had been selected solely because of her assessment score, this reason being communicated to her in February 2019.

9. The Respondent applied the pass mark to all candidates, whether full-time or part-time and Mr Taylor was not aware when setting the pass mark (which he had reduced for all candidates, judgment para 13) that the Claimant was part-time or who fell below or above that pass mark (judgment paras 13,14). The Tribunal found that the decision was made only on the basis of the assessment scores and not by reference to each individual. Whilst the Tribunal recognised that there was a subsequent delay in providing her with feedback (judgment para 16) this was not the Respondent trying to hide its reason for not selecting her for the role. This means that the Tribunal found that the feedback delay did not mean that the reason given by the Respondent (ie solely the Claimant's assessment score) was not genuine.

10. Whether or not the Claimant had been told any earlier the original pass mark or what it was changed to by Mr Taylor, does not change the finding that the Claimant did not reach the required mark in the assessment and that this was the only reason for the decision on her application for the ECHS role.

11. The Claimant did not need to know what all the scores were to know whether or not she had passed the assessment. She had been told she had not passed and that this was the reason she had been unsuccessful.

12. The Claimant says that on question 7 she should have been given a higher score, but does not explain why, what it should have been instead and whether that would have affected the outcome. She accepted at the hearing that Mrs Thompson and Mr Cox acted in good faith when doing the assessment and did not disagree with the marks or the explanation (judgement para 14).

13. The Claimant is asserting that she lost an opportunity to challenge her score but that is not relevant to the Respondent's reason for its decision ie why it made the decision it had already made about her assessment score on a fair and transparent assessment.

14. The Claimant disagrees with the Tribunal's findings of fact but she has not produced any new evidence to support a reconsideration of those findings of fact.

Removal of the diversity assessment part of the assessment (para 6 of reconsideration application)

15. This was removed for all candidates, whether full-time or part-time (judgment para 13). There was therefore not less favourable treatment as between full-time and part-time candidates.

16. The Claimant has in any event not provided any evidence that including the diversity scores in her case would have changed the overall outcome. She has also not said why the Respondent's decision to exclude them for all candidates amounts to less favourable treatment of her as a part-timer.

17. The Claimant disagrees with the Tribunal's findings of fact but she has not produced any new evidence to support a reconsideration of the Tribunal's findings of fact.

The Respondent's witnesses and their awareness of her part-time status (para 7 of reconsideration application)

18. The Tribunal found (judgment para 13) that the decision maker who set the pass mark for the assessment was Mr Taylor and that firstly he did not know the Claimant worked part-time and secondly when he set the pass mark he did not consider individually who fell above or below the pass mark. The Claimant has not produced any new evidence to challenge these findings.

19. The Claimant refers to Mr Cox but he did not take the decision on her application for the ECHS role which was a decision taken by Mr Taylor when he set the pass mark for all the candidates.

20. The Claimant disagrees with the Tribunal's findings of fact but she has not produced any new evidence to support a reconsideration of those findings of fact.

Being encouraged to apply (para 8 of reconsideration application)

21. This is not relevant to whether or not the Respondent's decision not to appoint her was because of her part-time status, which the Tribunal found to be the assessment score on a test which the Claimant said had been conducted by Mrs Thompson and Mr Cox in good faith (judgment para 14). Such encouragement is in any event in line with her part-time status not being a or the reason for not being selected for the ECHS role. It is in any event also inconsistent to say she was encouraged to apply and yet also that she was deliberately then under-scored and set up to fail (see below).

Training (para 9 of reconsideration application)

22. The Tribunal found that the only reason for the Claimant not being selected for the ECHS role was her score on the assessment (judgment para 13,14). The Claimant has not produced new evidence that it was wholly or partly because the Respondent did not want to accommodate her part-time hours in any subsequent training programme, if she were to be selected.

Deliberately scoring the Claimant less and setting the pass mark so that she would fail (para 10 of reconsideration application)

23. The Claimant did not claim that Mrs Thompson and Mr Cox acted in bad faith in conducting her assessment (judgment para 14). Mrs Thompson and Mr Cox did not decide on the final (lowered) pass mark which was set subsequently by Mr Taylor.

24. The Tribunal found that it was only the assessment score which was used to make the decision (judgment para 13,14). That was a decision taken by Mr Taylor who set the pass mark and without reference by him to any of the individual candidates who were not discussed.

25. Whilst the Claimant disagrees with these findings, the Claimant has not produced new evidence to challenge the Tribunal's findings.

**Employment Judge Reid
Date: 7 April 2020**