EMPLOYMENT TRIBUNALS

Claimant: **Ms K Hardy-Popa**

Respondents: **(1) Iceland Foods Limited (2) Mr G Robinson**

RECONSIDERATION JUDGMENT

The claimant's applications dated 20 January 2020 and 25 January 2020 for reconsideration of the oral judgment of 17 January 2020 are refused.

REASONS

The reconsideration applications

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the oral judgment given on 17 January 2020.

2. On 20 January 2020 the claimant emailed the Tribunal saying:

> *"I was just on the phone with you in order to report that Mr Greg Robinson committed perjury while he was under oath this Thursday just gone. I tried to speak up and explain the lie by telling the Judge about the "Ambulance Story" but I was told that I had to just ask questions and not tell the story. I tried talking to the judge on Friday but I was told to send an email requesting the verdict by email within 14 days. I have sent an email Saturday morning and I have called the tribunal to speak twice today. Now I have found that Perjury is a crime against the court and I just speak up. Thank you for passing this information on to the judge for me."*

3. On 25 January 2020 the claimant sent a further email saying "I am writing to you today in order to tell you why it would be in the interests of justice for the original decision to be reconsidered." Within her email the claimant states that Mr Robinson lied under oath when being asked questions by Judge Harfield. She refers to Mr Robinson's witness statement saying "when Karine arrived at the party I remembered asking her how she was."

The claimant says her account of the conversation is that she said hello to Mr Robinson first and when he asked her "how are things" that she had said "Well, actually, not so good… Our store manager doesn't care about his staff and his customers." She says Mr Robinson said What do you mean" and that she replied "It is what it is."

4. The claimant also complains that Mr Robinson's account in his witness statement and his oral evidence were not correct in relation to what happened when the ambulance was called on the night in question. The claimant says the form the ambulance staff had that she personally refused to sign was a paper form and not on a tablet. She says that Mr Robinson came out after the ambulance had left.

The law

5. An application for reconsideration is an exception to the general principle that (subject to an appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

6. Under Rule 72(1) I may refuse an application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

7. The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 where Elias LJ said:

> *"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

8. Similarly in Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the EAT chaired by Simler P said that:

> *"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule.*

They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

Decision

9. During Mr Robinson's cross examination the claimant did start to give her own narrative account about what happened on the night in question when the ambulance was called. I did stop her and explain that we were not at the stage in proceedings where she was giving her evidence. I told the claimant that if she wanted to put questions to Mr Robinson setting out her points of disagreement with him then she could do so, but it was not an opportunity for the claimant to directly give evidence herself. When the judgment with oral reasons were handed down the claimant did attempt to speak to the Tribunal panel and I told her that I could not speak to her about the decision or the reasons behind it but I could try to answer questions she may have about what happened next. I said this because the Judgment and the oral reasons were at that time the final adjudication in the case and a party who wishes to challenge them has to do so under a formal procedure by applying for reconsideration and/or an appeal to the Employment Appeal Tribunal. The handing down of oral reasons is not an opportunity for further discussion and debate about the case. I did tell the claimant that there was a 14 day period in which to apply for written reasons.

10. The claimant says that the evidence Mr Robinson gave the Tribunal on what was said when the claimant arrived at the party and what happened when the ambulance was called was not correct.

11. When deciding the issues that needed to be decided in the case the Tribunal did not find it of any assistance to reach detailed findings on what was said when the claimant arrived at the party or what happened when the ambulance was called. The Tribunal only needed to reach findings of fact on points in dispute that were directly relevant to the issues to be decided in the case. What happened when the claimant arrived at the party or the detail of what happened when the ambulance were called were not, for example, events that the claimant relied upon as being breaches of contract in her constructive unfair dismissal claim.

12. The claimant may say that if Mr Robinson was incorrect about these things then he may be incorrect about other things he said in evidence. The Tribunal, however, is very alive to the fact and the various studies that show how human memory, even amongst those who stridently assert they can recall something very well, is inherently fallible (and even more so after the passage of time which was lengthy in this case). Moreover, it does not

necessarily follow that a witness whose evidence is incorrect or even untruthful on one particular point means that all their testimony or other parts of their testimony is therefore necessarily incorrect or untruthful. This is one reason why the Tribunal, as it did in the claimant's case, had particular regard to any contemporaneous documents that were available when making findings of fact on disputed points.

13. I therefore do not consider that it is in the interests of justice to re-open the points that the claimant seeks to re-open. They were not factual points that were key to deciding the issues in the case and whether or not Mr Robinson was correct, incorrect, mistaken, misremembering things due to the passage of time, legitimately reflecting the fallibility or human memory or being untruthful on these ancillary points it would not help the Tribunal in its determination of other key issues in the case or be likely to change the outcome of the proceedings.

14. I also do not intend to take any other action in relation to the complaints the claimant makes about Mr Robinson.

15. I am satisfied that there is no reasonable prospect of the Tribunal's original decision being varied or revoked. The application for reconsideration is therefore refused.

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Employment Judge Harfield
Dated: 5 June 2020

JUDGMENT SENT TO THE PARTIES ON 11 June 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS