



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Hefford

Respondents:

- (1) Dr M Jack
- (2) Dr A Sivaprasad
- (3) Dr J Sorouji
- (4) Dr O Aderonmu
- (5) Dr S Azeem

JUDGMENT

The respondent's application dated 7th September 2020 for reconsideration of the judgment sent to the parties on 25th August 2020 is refused.

REASONS

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

The respondent's grounds for reconsideration

1 The respondent has set out 4 points on which it requests a reconsideration.

- a) The claimant deliberately concealed the fact that she had a recording and had played it to Ms. Wells. The tribunal is incorrect at paragraphs 83 and 84 when it states that this was not put to the claimant.

The respondent made its point in written submissions that the claimant had asked Ms Wells to accompany her because she could influence her to keep the recording the secret. It is said that this admission is based on undisputed facts that Ms. Wells did attend the appeal meeting and witnessed the claimant failing to mention she had made the recording and played it to Ms Wells.

- b) The fact that this recording was played to Ms Wells was consciously withheld from the grievance appeal investigators was not properly considered by the tribunal in paragraphs 127 and 128 of the judgment
- c) The tribunal did not make any comment as to whether Ms Wells anxiety had any bearing on her credibility as a witness.
- d) A number of matters were not put to Ms Wells by the tribunal panel particularly the matters upon which conclusions at paragraph 66, 69, 70 and 28 were based. In particular, the WhatsApp document was not put to Ms Wells. The respondent's submissions states that they accepted the late admission of the claimant's evidence on the basis the tribunal would have equal regard to the fact that the claimant had created the WhatsApp group and had expressed that she was thinking about leaving the respondent prior to her pregnancy announcement.

Consideration of the respondent's points

The first ground – point not put to Ms Wells is inaccurate

- 2. With respect to the first ground, it is disputed that questions on deliberate concealment were not put to the claimant and we are therefore asked to reconsider a finding of fact made on that basis. Paragraph 83 has 2 sentences. Paragraph 84 which refers to a matter not being put to the claimant refers to the second sentence of paragraph 83 only. That is, it was not put to the claimant that her *reason* for confiding in Ms Wells and asking her to accompany her to the grievance appeal was because she could influence her to keep the recording a secret.
- 3. This latter point (the reason for selecting Ms Wells) was made by the respondent in written submissions, but the panel's notes do not record that it was put to the claimant. We do not accept that it is an undisputed fact that because Ms Wells attended the appeal meeting the claimant's choice of her as a companion was therefore because of her ability to influence her. We have found that the reason for asking Ms Wells was that at the time they were friends.
- 4. There is no reasonable prospect of the original decision being varied or revoked on this ground. The respondent's request is based on an incorrect reading of the judgment. The point made in the second sentence of paragraph 83 was not put to the claimant and there is no evidence to support this proposition.

The second ground- conscious withholding not considered

- 5. This concerns what is said to be the claimant consciously withholding from the grievance appeal investigators that there was a recording and it had been played to Ms Wells. The tribunal's analysis at paragraphs 127 and 128 is said not to go far enough to determine if the claimant had committed gross misconduct or misconduct based on a breach of trust and confidence.

6. The respondent did put questions to the claimant about deliberate concealment. The claimant's response was that she did not believe it was a significant point, she did not have the recording at the time, and it was for these reasons that she had not mentioned it.
7. While this conscious concealment was raised during the hearing, it does not form part of the many disciplinary charges put to the claimant. The judgment addresses the allegations made at the time of the dismissal and reaches a conclusion on the allegations on which dismissal was based. We state at paragraph 126 that we reach a different conclusion than the consultant who chaired the disciplinary hearing.
8. There is therefore no reasonable prospect of the decision being varied or revoked on this ground as conscious concealment was not a ground on which the claimant was dismissed. A finding on all grounds that were part of the dismissal was made.

The third ground- Ms Wells anxiety impacting credibility not considered-

9. The respondent recites what it says were delays in Ms Wells being able to give her evidence being permitted, despite Ms Well's anxiety being known. It is said to be critical that the judgment did not note her anxiety and the interruption of her evidence as the witness became unwell and that no comment is made on her credibility because of her anxiety.
10. We have not expressly noted Ms Well's anxiety. We have also not noted that we were told Ms Wells had suffered her third miscarriage just days before and that this was impacting her physical health as well as causing her distress. We considered that such details did not need to be put into the public domain in the form of a published judgment.
11. We were unable to tell what extent Ms Well's anxiety was triggered by the proceedings or was influenced by her personal circumstances. We took her distress into account and made our findings on credibility based on the evidence we heard, but also on documentation prepared during the events and not for the hearing which showed Ms Wells statement of 9th April was incorrect as to which Dr she heard on tape. Her evidence contradicted by both the claimant and Dr Sorouji. Her email of 14th April was also incorrect and contradicted the claimant and Dr Azeem as to dates.
12. Ms Well's anxiety was part of the factual background considered and for the reasons set out above and in the judgment her evidence was held to be less credible than the claimant's.
13. There is no reasonable prospect of the decision being varied or revoked on this ground as it was considered, and a finding made.

The fourth ground-failure by the panel to put matters to Ms Wells

14. The finding at paragraph 66 was based on Ms Wells' evidence as set out at paragraph 65 and this point was put to her by the claimant. As referred to above, the finding at paragraph 69 is based on the evidence of 2 other witnesses who were present at the meeting referred to.
15. The matters described at paragraph 128 were contained in Ms Wells' statement. The panel asks questions when matters need to be clarified.

16. It is correct that the What's app document was not put to Ms Wells. Contrary to the submission made in this reconsideration request, the panel has no note of Mr Chaudry consenting to the late inclusion of this document on the basis the tribunal paid equal regard to the reason why this group may have been created by the claimant.
17. The panel's note records Mr Chaudry telling us that he is happy for the document to be added to the bundle, but not for Ms Wells to be cross examined on it given her delicate situation. Accordingly, the panel did not ask Ms Wells about this, but it must be entitled to draw conclusions from the document without having put it to a witness when we were requested not to do so.
18. There is no reasonable prospect of a variation on these grounds as matters were put to the witness when appropriate.

Conclusion

19. For these reasons there is therefore no reasonable prospect of the application for reconsideration succeeding on any of these grounds

**Employment Judge McLaren
Date: 28 September 2020**