EMPLOYMENT TRIBUNALS

Claimant: Mrs A Chadwick

Respondent: Alternative Futures Group Limited

JUDGMENT

The claimant's application dated **9 September 2020** for reconsideration of the judgment sent to the parties on **28 August 2020** is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. References in square brackets (e.g. [25]) are references to paragraph numbers from the reasons promulgated with the judgment.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to 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).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

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

> **"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."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to 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."**

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in her favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points she makes which should be addressed specifically.

9. The existence of the Unison Whatsapp messages was relevant to my conclusions at [106], [109] and [110]. The claimant submitted the content of these messages as evidence at the hearing at [8]. I accepted the respondent's witnesses evidence [90] that, because of the vulnerable service users, when presented with evidence that the claimant had made derogatory comments and used swear words in a number of messages, they had to refer the matter to HR for investigation.

10. The disciplinary investigator did not consider the content of the Unison Whatsapp messages when drawing her conclusions and the claimant confirmed she was happy with the investigation [95]. At [108] I concluded that the cause of the claimant's resignation was learning of the detail of the allegations which at the outset of the meeting [48], included the Unison messages.

11. The decision to move the claimant and her colleague was taken by the Area Manager [89]. The colleague's sickness record was introduced in evidence at [8].

I accepted the evidence of the Area Manager that the colleague did not return to work until August 2019, after the claimant had resigned, and therefore it was no longer necessary to move the colleague. I accepted the evidence that had the colleague returned to work, it would have been reflected in the sickness record for pay purposes.

Conclusion

12. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge **Ainscough**

Date 12 October 2020
JUDGMENT SENT TO THE PARTIES ON

12 October 2020

FOR THE TRIBUNAL OFFICE