



EMPLOYMENT TRIBUNALS

Claimant: Miss Gisele H da Cruz Andrade

Respondent: East London NHS Foundation Trust

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. Subsequent to a hearing on 14 October 2020 I promulgated a judgment which found that the Claimant was employed by the Respondent from 06 September 2016 until 30 June 2019.
2. By email of 15 October 2020 at 08:37 the Claimant made submissions which amount to an application for a reconsideration of part of my decision, seeking a decision that the end of the employment was not 30 June 2019 but 31st December 2019.
3. Her email read:

"I am writing to inform that the point explained yesterday by Mr. Adjei regarding protective information about my latter contract was incorrect.

I can see how that could be confusing now, especially when we were all tired at the end of the day, because the outcome of the grievance offer (protected information) and Mason's offer (6 months fix-term contract with the Estates department), provided me with the same length of time (6 months) and the same type of contract (fix-term) that would cover me until

the end of December 2019. However, they were two separate proposals, Mason's offer made and accepted by me long before the outcome of my grievance.

The evidence that this was an independent/separate offer provided to me by Mason is that, as confirmed by the Respondent, I have started working with the Estates team on 1st July 2019, and I had already come to meet the team and organising my start day in May 2019 as per Mason's advice on his email dated 13th May 2019 provided in the Respondent bundle on page 239.

However, my grievance outcome did not come out until 5th July 2019 - I understand that the content of the grievance is protected information but can only the first page be looked at just to confirm the date on it's issue? This can be find in my bundle on page 95.

After this time then a settlement agreement were proposed to me in August 2019. After I received the settlement agreement by the respondent then my union referred me to their solicitors for advise on the settlement agreement and only after consulting with my union's solicitor on the 23rd of August (please see my bundle evidence on page 205) then I have sent my reply to the Respondent that I could not sign that agreement for the reasons I would not state here as I was explained this is protective information for the respondent and I respect that.

So we can see that I was already two months into the offered six months fix-term contract with the Estates when everything related to the grievance came out. I had already met with the team and had had an induction for my new post, allocated a desk, pedestal ordered for me as I was there to stay and was already working on my first project management role allocated by my new manager Mark Taylor... - all this evidence I can provide if needed. This can also be proved by a very small print email, sent on the 23rd August 2019 from HR to my new manager on the Estates department Mark Taylor, confirming my agreement with Mason to work with the Estates until 31 December 2019, submitted in the Respondent's bundle on page 269 that reads and I quote:

"Since Gisele has been sign off until end of September, she will not be coming to Estate anymore" (sing off referring to my doctor and my sick leave - please see this evidence in my bundle on page 2-12). To what my then new manager Mark Taylor replied on the email below "Treat carefully."(this can be found also in Respondent's bundle on page 269).

Mark Taylor said this, "Treat carefully", as he and the Director above him John Hill (referred on Mason's Witness Statement) were aware of my

struggles and stress caused by the unfair constant changes by Mason (from 6 months fix-term contract suddenly reduced to 4 months fix-term contract then no fix-term contract at all and an email saying he decided I would be just bank and that I could be given only one week's notice to leave in an extraordinary show of abuse of power).

I therefore bring to the attention of the court the fact that I was employed by the Trust until 31st December 2019, as per the evidence here provided, and ask for this information to be amended in the records of yesterday's PH and considerate in the decision due, in the interest of justice as the fact here provided are now clarified and are the representation of the only true.

I apologise for not being able to provide this clarification yesterday when this was discussed along with other points at the end of the day. I admit I was already very tired, overwhelmed having to represent myself and find all evidence alone, moving from one folder to another, against a solid team of very experience senior law professionals as well as managers and Directors. I ask the court to consider this fact and to accept my clarification today.

I confirm that I have included the Respondent's representative in this email."

4. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

RECONSIDERATION OF JUDGMENTS

Principles

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

Application

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.

Process

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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

5. The application was made promptly. The Respondent has not made any observations on it.
6. The substance of the application is to reargue the point, which was fully addressed in the hearing. It is dealt with in the decision, particularly at

paragraphs 27 and 47-49. Accordingly I decline to reconsider the judgment, as the application is no more than a disagreement with its conclusions.

**Employment Judge Housego
Dated 26 November 2020**