



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Kathryn McKeown

**Respondent** PMM Hotels Limited

## JUDGMENT ON A RECONSIDERATION

The respondent's application dated 16 October 2020 for reconsideration of the Judgment sent to the parties on 14<sup>th</sup> October is refused.

### REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. I have considered the respondent's application for reconsideration of the Judgment. The application was emailed by the respondent and received by the Tribunal on 14 October 2020, supplemented by further emails sent on 14 October, 16 October and three emails on 21 October 2020. The claimant responded to the application by emails of the 21 October 2020 I have taken the contents of the emails into account.

### Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.
3. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

4. When dealing with the question of reconsideration I must give effect to the overriding objective to deal with cases 'fairly and justly' under rule 2 which includes: ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, so far as compatible with proper consideration of the issues; and saving expense. I must also be guided by the common law principles of natural justice and fairness
5. The discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

### **The application**

6. There is no reasonable prospect of the respondent establishing that the Tribunal made an error of law, or that any of the conclusions on the facts were perverse. Such contentions are in any event better addressed in an appeal than by way of reconsideration. The application contains two substantive points. I have considered each point in turn;

#### Point 1

7. That the Claimant lied under oath; it is alleged in the emails from the respondent in support of its application, that the claimant lied during the Tribunal hearing by denying that there had been a meeting with her on 4 October 2019 when issues with her performance were discussed.
8. It is alleged by the respondent that the claimant lied during the hearing because a meeting did take place on the 4 October 2019 and that the respondent has CCTV evidence it can provide which it alleges shows that the claimant left the meeting in tears. It is not alleged by the respondent in its application, that the 4 October 2019 alleged discussion/meeting, formed part of any formal disciplinary or performance management process. The respondent refers to two individuals conducting this meeting on behalf of the respondent however, the application does not include with it any witness statements from those two individuals.
9. The respondent does not assert in its application that the CCTV or evidence from the two alleged witnesses, was not available at the time of the Tribunal hearing and it provides no reason why this evidence could not have been presented to the Tribunal at the hearing itself.

10. Even if there had been a meeting on the 4 October 2019 where discussions had taken place about the claimant's performance, there is no reasonable prospect of that changing the decision. The respondent alleged that it dismissed the claimant because of misconduct and relied on the same misconduct to assert in the alternative a breakdown in trust and confidence. The conduct alleged was aggressive text messages sent by the claimant to the respondent. I found that the messages were not aggressive and that the respondent had not satisfied the burden of showing that misconduct was the reason for dismissal. I further found that the real reason for dismissal was the claimant's request for statutory sick pay during her sickness absence. I also considered the process that was followed; Mrs Walsh a director of the respondent, had accepted at a preliminary hearing on 26 March 2020 that the respondent had not followed any investigation or disciplinary process. The respondent also wrote to the Tribunal prior to the hearing, accepting that the respondent had not followed 'Acas process or procedure'. I found that there was no fair reason to dismiss, there was no misconduct, no reasonable belief that the alleged misconduct had taken place and the decision to dismiss was not within the band of reasonable responses. The respondent does not assert within its reconsideration application that this alleged 4 October 2019 meeting was part of any formal disciplinary or performance management process and does not explain how it would have any material bearing on the findings or outcome of the case.
11. In respect of any issue around credibility; the claimant has responded to this application for a reconsideration stating in an email that there was a general chat about new cleaning procedures with her on 4 October 2019 but no discussion about her performance or abilities. I have checked my notes of the hearing and the claimant did not deny any meeting took place on 4 October 2019 but that there was no meeting on 4 October where issues with her performance or conduct were discussed hence the reference in the judgement to the claimant denying any such meeting took place with her, as alleged by the respondent.
12. The respondent failed to attend the Tribunal hearing, despite being warned that the hearing would proceed in its absence. The respondent does not complain in its application for a reconsideration about the hearing proceeding in its absence. The respondent did not apply for an adjournment of the hearing at the time.
13. It is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed as a result of oversight or a miscalculation in their strategy in defending the case, to adduce all the evidence available in support.

Point 2

14. There is also a further complaint that I was; “...*totally biased and completely dismissed the evidence recorded and presented by the respondent*” and that “*evidence was dismissed and mocked by the Judge.*” The respondent does not identify any specific grounds for its allegations of bias or explain the reason for alleging evidence was dismissed or mocked.
15. The application for reconsideration largely expresses the respondent’s dismay and disagreement with the conclusion that the claimant had been unfairly dismissed. However, the reconsideration process is not a method by which a disappointed party to proceedings can get a second bite of the cherry.

**Conclusion**

16. Having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

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Employment Judge Rachel Broughton

Date: 29 November 2020

JUDGMENT SENT TO THE PARTIES ON:

3 December 2020

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FOR THE TRIBUNAL OFFICE