EMPLOYMENT TRIBUNALS

Claimant: **Mrs R Singh**

Respondent: **Convatec Ltd**

Dated: **5th February 2021**

Before: **Employment Judge R F Powell**

RECONSIDERATION

I reject the claimant's application for reconsideration under Rule 70(1) of the Tribunal's Rules of Procedure 2013: there is no reasonable prospect of the tribunal's original judgment being varied or revoked.

REASONS

Introduction

1. Following a hearing which commenced on 9th November 2020 the tribunal sent a written judgment with reasons to the parties on the 22nd December 2020 dismissing the claimant's claims of discrimination and victimisation.

2. On 28th December 2020, the claimant wrote to the tribunal for a reconsideration of the judgment.

3. Because the claimant is a litigant in person, I have responded in more detail than I normally would.

The relevant rules on reconsideration

4. Applications for reconsideration are governed by Rules 70 to 73 of the Tribunal's Rules of Procedure 2013.

5. Rule 70 provides that a tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is "necessary in the

interests of justice to do so". Following a reconsideration, a judgment may be confirmed, varied or revoked (and, if revoked, it may be taken again).

6. Rule 72 describes the process by which an application for reconsideration should be determined. The application should, where practicable, first be considered by the Employment Judge who made the original decision or who chaired the full tribunal that made the original decision. Rule 72(1) requires that judge to refuse the application if he or she "considers that there is no reasonable prospect of the original decision being varied or revoked". If the judge considers that there is a reasonable prospect of the original decision being varied or revoked, the Rules go on to provide for the application to be determined with or without a further oral hearing.

7. This document sets out my initial consideration of the claimant's application under Rule 70(1).

The claimant's application

8. The claimant's letter dated 28th December 2020 raise a number of points in a structured fashion. I address each in turn.

Of Paragraph 1

"1. In the preliminary hearing on 13th September 2019 in Mold Judge R. Brace made a list of the claims. One of the claims was my six year pay-freeze which there was strong evidence was due to my ethnicity. I was the only Indian who worked on the shopfloor, but had relocated for the company from Coventry (in 2005) when a machine I was fully conversant on had been relocated to Deeside. This was why I was on a higher rate of pay to others in the Deeside factory. Mr. W. Simcox then decided to freeze my pay until such a time when I came in-line with others at the site when I refused the options, I was given. I believed my expertise and relocation was the reason for the higher rate and did not see why I should choose one of his options when I did not think he had a right to change the relocation agreement. Another British colleague from Coventry relocated to South Wales but was not subjected to a pay-freeze. Judge R. Brace allowed this claim to proceed (p. 67, no. 16 in the final bundle). However, on 16th January 2020 in the hearing you struck out this claim that another judge had allowed. You stated Rule 70, 71 as the reason (see points 8 and 9 in the judgement) which was surprising given that Judge Brace had appeared to overlook this. I have not received the original judgement as stated in point 9. I had not been given the right to appeal either. When requested to reconsider, you stated that there was no evidence of it being race related and therefore "the reconsideration application was not allowed" (point 9). I am at a loss as to understand why it was allowed in the first place given your ruling. "

1. Employment Judge Brace's order recorded all the allegations which Mrs Singh wished to rely upon. Employment Judge Brace did not make any decision about the Employment Tribunal's jurisdiction to determine those claims. She did not "allow" the claims.

2. Employment Judge Brace ordered that a separate preliminary hearing should consider whether any aspect of the claim was "out of time" and whether a new allegation (against Mr Pearson) should be admitted.

3. I heard the case on the 16th January 2019 and found that the allegation relating to a decision by a senior manager of the respondent in 2008 (to impose a pay freeze on the claimant), the consequences of which remained in force until 2014, was not "within time" for the purposes of section 123 of the Equality Act 2010. I concluded that there was no factual nexus between the 2008 allegation and the subsequent 2017 allegations made in respect of alleged conduct the claimant's shopfloor peers and supervisors or the 2018 allegations made against her local managers. Thus, it was not on the pleadings, a decision which formed part of a continuing course of conduct. I concluded it was not just and equitable to extend time for the presentation of that particular allegation to 22nd December 2018; about ten years after the act of alleged discrimination.

4. I allowed an oral application to reconsider the decision because the claimant said she had not seen the judgment. The tribunal was sitting in Wrexham and unable to verify or investigate that statement[1]. In the oral judgment on the reconsideration application, I recited the reasons given in January 2020. I concluded, after hearing the claimant's submission, which were not materially different to those she made in January 2020, that the reconsideration application had no reasonable prospect of revoking the original decision.

Paragraph 2

"2. On 16th January 2020 at the preliminary hearing at Wrexham you allowed me to add my husband's judgement in the final bundle as a supporting document, but on the day of the final hearing (9th November 2020) in Wrexham court the Respondent's Counsel, Mr. Williams, argued that my husband's judgement should not be allowed in the final bundle. I did not think a solicitor would be able to reverse a judge's decision, especially as it proved previous institutionalised racism. There was also no transcript of the hearing on 16th January."

5. I have reviewed the Case Management Order I made on the 16th January 2020. I made no order about documents with respect of disclosure. I made no order concerning the content of the bundle save that it should be agreed.

6. In any event, the Employment Tribunal panel read each paragraph of Mr Singh's Judgment and Reasons to which Mrs Singh wished to refer and then considered each of those paragraphs in light of Mrs Singh's submissions on each. After consideration, we concluded that Mr Singh's judgment did not assist us to determine what had happened between Mrs

[1] I have asked that a copy of the judgment with reasons of the 16th January 2020 sent to Mrs Singh.

Singh and different members of the respondent's staff in 2017/2018; some years after Mr Singh's claim had been determined.

Paragraph 3

"3. Of particular concern is the assumption made (see point 25) that my relationship with Ms. Williams "had been uncontentious for around 14 years prior to the change in [our] respective seniority". In Ms. Williams' Witness Statement, she draws a picture of two friendly, chatty work colleagues which is simply not the case. I hardly ever worked with Ms. Williams as she was only part-time. The relationship alluded to simply did not exist as I was not her Line Manager for ten years, but simply one of the Line Managers she occasionally worked under. I never worked with her in Unit 19 as stated in her statement. I believe this fictitious situation persuaded you my issues were based on jealousy rather than unprofessional behaviour that contravened Race Relations policy."

7. The Tribunal accepted the evidence of Ms Williams (for instance that set out in paragraph 2 of her written statement) and her answers on this issue in cross examination. After consideration of all the evidence, the Tribunal preferred Ms Williams' evidence to that of the claimant.

Paragraph 4

"4. In point 26 from the judgement, it deals with my concerns over the senior role. In November 2016, I applied for a Process Operator and Process Technician vacancies (see p. 391 and 398 in the final bundle). According to the judgement, I never applied for senior roles even though I have documented proof that I did. Ms. Williams only applied for a Process Operator role (p. 398 - Carla Jane William twentieth name on the list) and I believe she was 'gifted' the job of Process Owner as she did not apply for it, whereas I can run 21 machines in the Clean Room. I applied for a senior role and there was only an application form and no interviews. I was never given feedback as to why I was not a good choice for the more senior role and was given a Process Operator role. I do believe this was because of my race, as the people appointed could operate far fewer machines then I. According to the Master File, Ms. Williams did not apply for the Process Owner job, but according to HR Director Penny Clarke she did apply (p.160 in bundle). I hope you can see from the emerging contradictions why I wish you to reconsider the verdict."

8. Paragraph 26 of the Reasons states:

"The claimant laid great emphasis upon her belief that Miss Williams was gifted the role of process owner. She challenged the evidence of Miss Williams, Miss Devlin and Mr Pearson that Miss Williams had applied for the process owner post and the claimant points to a document which reflects the applications all of the staff involved in the restructure and she notes (398) that the entry for Miss Williams does not record that she made an application for the process owner role. It is not alleged that the claimant was subject to a detriment on the grounds of her race by Ms Williams' appointment; the claimant had chosen not to apply for the more senior role. Further, when she requested promotion, she was offered a

"development" process owner role without an interview or the post being advertised. She took up that role in August 2017. It was around this time that the first alleged act discrimination is said to have occurred."

9. The Employment Tribunal made no finding about any *prior* applications the claimant may have made for promotion.

10. The claimant's witness statement, at paragraph 2, stated; "

"*I understand that I didn't apply for the Process Owner job in Dec 2016. It was a shock to me when the company gave a letter about everyone being made redundant and I wanted to secure my job as an operator".*

11. The assertion in paragraph 4 of the reconsideration application:

"I applied for a senior role and there was only an application form and no interviews. I was never given feedback as to why I was not a good choice for the more senior role and was given a Process Operator role."

is inconsistent with the claimant's witness statement and oral evidence before the tribunal and (for example at page 30 "Context") aspects of her pleaded case.

12. Further, the claimant had not made an allegation that the appointment of Ms Williams was an act of discrimination [page 69 to 70 of the bundle].

Paragraph 5

"5. Please see point 36 of the judgement: I explained during the final hearing that the ET1 had been drafted by a teacher friend who did not know if it was acceptable to put foul language in a court document, so she wrote the phrase "racial abuse by using a discriminatory term." When drafting my Further Particulars of Claim which I sent to the tribunal and Respondent by email on 15/04/2019 at 13.25 I did use the actual phrase directed at me in quotation marks "Indian bitch" as I believed specifics would be needed for the hearing. It was not first mentioned in documentation on 20th November 2019 as stated in the judgement (p. 37, number 11 in the final bundle). I provided the paperwork I completed on the day this insult occurred to show that my dates matched in my documentation (p. 384 the final bundle). This suggests that my Particulars of Claim on p.30 were not seen or duly noted."

13. The employment tribunal's reasons stated as follows:

"The overtly racist phrase was not mentioned in the ET1 particulars of claim. The claimant accepted in cross examination that the first occasion

on which she had referred to the phrase "Indian bitch" was her further and better particulars claim dated 20 November 2019."

14. The further and better particulars to which the Employment Tribunal referred were those at page 30 in the bundle. This was the only document from the claimant which bore that title.

15. Unfortunately, neither that pleading nor the index to the bundle dated that document.

16. The November 2019 date, which was mentioned in questioning, is incorrect, it was earlier that year; very probably April as the claimant suggests.

17. That error does not alter the chronology of the several accounts of the incident in which the claimant did not express racist language prior to the ET1, nor lessen the force of the cross examination and argument put forward by the respondent.

Paragraph 6

"6. For my claim regarding the broken locker, it clearly states on p. 209 in the bundle that during an interview with Elizabeth Cooke that Amy James said she "didn't investigate" the incident but had delegated to two other colleagues. There has never been an outcome for this investigation even when I asked about it, as I believed that this was also racially motivated as mine was the only locker broken into. Amy James left the company after 27 years of service and therefore was not available as a witness. According to S. Devlin's Witness Statement there is no paperwork for this incident other than emails and her reported conversations with Mrs. James. All of this information about a conversation with Mrs. James only came to light two years after the event when I mentioned the Dignity at Work Policy being contravened. I was also shocked to discover that Gary Pearson (Site Manager) knew nothing about this break-in / vandalism in a secure site."

18. All of the matters set out above were considered by the Tribunal, save for the claimant's shock, during the hearing, at Mr Pearson's answer in cross examination that he was unaware of the event.

Paragraph 7.

"7. Point 106 - I refute Ms. Williams' account. I appreciate that this becomes a "she said - she said" situation, but I am a single voice against a group that obviously benefits from supporting one another's accounts. Why was it not stated what the "separate issue" was that Ms. Vaughan came to speak to me about (see p. 40, number 25 in the bundle)? The vague nature of this comment is

useful to refute my claim that it was to check up on me after a particularly nasty interaction with Ms. Williams."

19. This paragraph acknowledges that Ms Vaughan corroborated Ms Williams denial of the alleged discriminatory conduct. The tribunal made no reference to paragraph 24 of the respondent's amended pleading (page 40) and, on the employment Judge's note it was not raised in evidence or submissions by either party. Ms Vaughan's witness statement described the nature of her conversation with the claimant on the 9th July 2018.

Paragraph 8

"*8. On point 77 it was noted that I had not taken up the offer to go and see Mrs. James after I emailed her about Ms. Williams' behaviour. This is untrue. As proved by p. 209 in the Grievance transcript, page-49 paragraph-16, page-164 in final bundle, Amy James recalls "We got together in the Lean room" and she stated she gave me "coaching" when in fact she simply said Ms. Williams shouldn't speak to me in the way she did. This was yet another incident that was not investigated."*

20. The claimant's witness statement, at paragraph 10 stated:

"I sent an email to Amy Jones about this incident. No investigation, to the best of my knowledge, has been done as no-one has spoken to me about it since"

21. Ms James did not give evidence and little weight was attached to notes from the grievance interviews. The Tribunal's conclusion reflected the only direct evidence on the point.

22. If the Tribunal had found that Ms James had addressed the claimant's comment, as set out in the grievance interview summary, it is difficult to see how her response, in the absence of any evidence of what the claimant said to her, could without something more, form a basis to conclude that her response was tainted by conscious or unconscious discrimination.

Paragraph 9

"*9. Point 149 - a decision was based on my Training Log which I had never seen before I raised the ET1. The fact it states I had "not progressed at the expected rate" and yet I was asked to relocate from Coventry due to my experience seems rather contradictory. If I was not progressing adequately, and was aware of that fact, why would I ask Ms. Vaughan to speak to HR about promotion (see email on p. 550 in final bundle and emails on p. 489-584). My other concern with the Training Log is that Gary Pearson's name does not appear once but he was in charge of training across the site. Nothing in this Training Log has been signed off by anyone, including myself. This could easily be a print-out made after my ET1 submission to cover poor practice within Convatec. Up until that point, I was not even aware it existed or can remember going through any formal training sessions. Any 'training' I did receive was more of the quick, informal type with no documentation in sight. The Process Owner vacancies on the night shift, which I inquired about to*

get away from an untenable situation, were given to two process operators, one of whom was Ms. Vaughan's husband who was previously an operator. This meant that he now worked under Ms. Williams' mother. Gary statement about me p-245 in final bundle line7,8,9 from bottom. "

23. The conclusion that the claimant was not progressing well in her development role was based on the evidence of the respondent's witnesses mentioned in paragraph 149 of the reasons. The training record was adduced by the respondent to corroborate the evidence of those witnesses. The respondent's references to the training log related to the claimant's development towards the more senior role of process owner in 2018., not her previous role as a process operator.

24. In any event, the factual allegation the tribunal was asked to determine was the rejection of her request to step down to the process operator role (allegation xvi).

Paragraph 10

"10. P. 207-208 bundle - according to Mr. Pearson's statement to the independent investigator Elizabeth Cooke, to move me onto a different unit would be "just moving a problem". He nodded in agreement when you asked him if he believed I was a "problem". However, since moving I have had no issues as I am no longer anywhere near any of the individuals mentioned in my ET1. I have to ask why all my attempts previous to this were blocked until 10th January 2019 when I was moved to Unit 20 (p. 285 transcript). You will note that, at this time, I was also asked if I would be happy to drop the ET1. I was also called in on the 17th January 2019 and again asked about the ET discussion from the 10th January 2019. At this point, they were at pains to list what they had done to accommodate me but ignored the times I had requested the same and there appeared to be an urgency to revoke the ET1. For me, this had now gone on for too long. The independent investigator asked if mediation was still a possibility and Mr. Pearson said it was not as I had "gone straight to Jonathan White" (p.208 of bundle).

This was clearly untrue as I had been trying to deal with these issues via HR and management and the email to Mr. White was about an idea to improve productivity. I do not know if this was an excuse used to avoid mediation or if Mr. Pearson was not aware of the actual content of the email to Mr. White. Either way, a decision was made based on a falsity. "

25. The Reasons contain a finding of fact that a mediation session did take place and ended due to the withdrawal, initially by Ms Williams, from that process.

26. The Tribunal also made a finding of fact that the claimant's shift was changed and that she continued in her process owner development role until her request to step down to process operator was agreed in January 2019.

27. The Tribunal found that there was not a refusal to allow the claimant to step down from the "development" role to her previous process operator role, however there was a delay.

28. Apart from the points above, the argument articulated in this application goes considerably beyond that which the claimant put before the tribunal. That is of course understandable, particularly for a litigant in person but any tribunal must consider the case on evidence and submissions which were put before it.

Paragraph 11

"11. In relation to Elizabeth Cooke, the independent investigator appointed by Convatec, I submit that there was a conflict of interest as Ms. Cooke works for Peninsula who has Convatec as a customer. Surely, this would mean a very low possibility of an unfavourable report on Convatec. I also raised concerns about the investigation as she never interviewed Mike Burke or Hayden Bartley about the incident on 19th March 2018 and did not investigate the sachets incident with Ms Williams and the first piece found in the bin."

29. The claimant's submission is relevant to Ms Cooke's motivation and her failure to interview two witnesses. The claims against Ms Cooke were withdrawn by the claimant.

Paragraph 12

12. Elizabeth recommended further training but this never happened. I had to step down, which Mr. Pearson had been waiting for (see statement point 18): "this was a request which we were prepared to consider. Personally, I thought it was a sensible one."

30. It is correct that the Cooke report made a recommendation for training. The reconsideration complains of a failure to adopt that recommendation. That complaint was not an allegation which the claimant had presented to the Employment Tribunal for determination.

Paragraph 13

"*13. I wrote a letter to my local MP, Mark Tami, to help me who wrote a letter to Convatec (p.278-279) and I also submitted details of the medication and my Psychiatric Consultant. I remain on the medication I was initially prescribed as I still suffer from anxiety and low mood. Neither of these were mentioned in the final judgement, so I do not know if they were considered."*

31. The claimant referred to the letter from her MP but, she made no specific reference to the content of medical evidence with respect to the issues on liability. The tribunal had indicated to the parties that only those documents which were referenced in evidence, cross examination or submissions would be taken into consideration. Further, the written reasons seek to enable the parties to understand why they won or lost their case but not to record every document which was considered.

32. In light of the above, I consider that the grounds set out by the claimant have no reasonable prospect of success and accordingly I refuse the application for a reconsideration.

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Employment Judge R F Powell
Dated: 5th February 2021

RECONSIDERATION DECISION SENT TO PARTIES ON 11 February 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS