



EMPLOYMENT TRIBUNALS

Claimant: Ms A Howarth

Respondent: Genesis Cancer Care UK Ltd

Heard at: Bristol **On:** 5th March 2021

Before: Employment Judge P Cadney

Representation:

Claimant: Written Submissions

Respondent:

Reconsideration Judgment

The judgment of the tribunal is that-

- i) The claimant's application to reconsider and revoke the Judgment promulgated on 27th January 2021 is dismissed

Reasons

1. Following the judgment given after the full merits hearing dismissing the claimant's claims she has applied for reconsideration of the decision. Although the claimant does not explicitly limit her application she makes three points. The first two relate to the claim for unfair dismissal, and the third to the claim for wrongful dismissal/notice pay. On the face of it therefore, and my understanding of the application, is that there is no application for reconsideration of the dismissal of the claim for whistleblowing detriment.
2. The points in respect of which the claimant is seeking reconsideration are:-
3. Paragraph 40/ Elli Harrison's participation in the investigatory, disciplinary and/or appeal process -

4. For ease of understanding paragraph 40 of the original decision is : *“Secondly, she alleges that Ellie Harrison should not have been involved at the disciplinary or appeal stage. This is based on a passage in the disciplinary policy: “The manager carrying out the investigation will not chair or be involved as a member of any subsequent disciplinary meeting”. As set out above the manager who carried out the investigation was Ms Kelleher, and the respondent contends that she did not have any further involvement. Ms Harrison’s role was simply to provide HR support and she was at no stage involved in the investigation or in any decision making role. In essence they submit that the claimant has simply misunderstood this part of the policy. This in our judgement is correct.”*
5. The claimant contends that her the evidence shows that Elli Harrison’s her participation goes “far beyond the bounds of providing HR support..”. The claimant makes four specific allegations that:-
 - a) She curated the investigation evidence;
 - b) She asked non HR related questions at the disciplinary hearing;
 - c) She developed the contents of the dismissal letter;
 - d) She provided direction beyond HR support at the appeal.
6. The difficulty for the claimant that even if true it does not fundamentally affect the decision. If the whistleblowing claim is dismissed (as we did and which is not the subject of an application for reconsideration) the case becomes a straight forward “Burchell” misconduct claim; which itself fundamentally becomes whether Ms Beaumont and Mr Gearing genuinely and reasonably reached the conclusions they did. Ms Harrison’s participation was in our judgement in her HR capacity and there was no evidence that her participation influenced their conclusions which as we found were entirely rational conclusions open to them on the information before them. The points made by the claimant in the reconsideration application do not alter these conclusions. This leads on to the second ground of the application for reconsideration.
7. Paragraph 43 / Ms Beaumont’s conclusions were not logical and rational
8. For ease of understanding paragraph 43 of the original decision is:- *“That leaves the central question in this case; whether Ms Beaumont could reasonably have formed the conclusions she did as to the misconduct on the information available to her. As set out above we accept the claimant’s contention that it might have been preferable if someone not involved in the original incident had carried out the disciplinary process. However, that does not in and of itself render the dismissal unfair. The central difficulty for the claimant is that Ms Beaumont’s conclusions are detailed, thorough fair minded and wholly rational. There is not a hint of pre-judgement but a wholly rational and forensically detailed analysis of the evidence. She sets out her conclusions in the clearest terms and explains the evidential basis for them, and addresses the claimants contentions (as we have set out above). In our judgement Ms Beaumont’s conclusions clearly fall within the range reasonably open to her.”*
9. The claimant makes seven points, which she asserts should have led Ms Beaumont to have concluded that the claimant’s account was to be preferred; or should have led us to conclude that Ms Beaumont’s conclusions fell outside

the range reasonably open to her. The difficulty for the claimant lies in the passage underlined above. In our judgement the conclusions drawn by Ms Beaumont were wholly rational and unquestionably fell within the range reasonably open to her; and none of the points made by the claimant alter that conclusion.

10. Paragraph 46 /The application of the Burchell test
11. For ease of understanding paragraph 46 of the original decision is: *“However, there are aspects of the claimant’s conduct about which we can make findings. Based on the claimant’s own account she adopted a highly confrontational attitude when she attended at work on Monday 11th June. She was abusive to Ms Foreshaw, calling her a “crap radiographer” on the first working day after she discovered that Ms Foreshaw had been permanently appointed, and pursued her after the initial confrontation into Ms Foreshaw’s office. She accepts that she physically touched Ms Foreshaw’s phone knocking the cover off, and the overwhelming contemporary evidence is that her conduct left Ms Foreshaw in very significant distress. In our judgement even on her own account the claimant was clearly primarily responsible for starting and prolonging the confrontation which in our judgement was sufficiently serious misconduct to amount to a fundamental breach of contract justifying the respondent in dismissing her.”*
12. The reference to the Burchell test this respect is an error as it has no application to a claim for wrongful dismissal / notice pay. In essence the claimant makes that same points as to why we should not have accepted Ms Foreshaw’s evidence. As a matter of fact we did not hear from Ms Foreshaw and have accordingly made no specific finding as to the central disputes between her and the claimant. Our conclusions as to this claim are based on the undisputed evidence and the contemporaneous documentation and the points made by the claimant do not alter those conclusions.
13. It follows that the original decisions are confirmed and that the application to revoke the original decision is dismissed.

Employment Judge P Cadney
Date: 05 March 2021

ORDER SENT TO THE PARTIES: 08 March 2021

FOR THE TRIBUNAL OFFICE