



# EMPLOYMENT TRIBUNALS

**Claimant:** Laura Stock

**Respondent:** Joanne White

## JUDGMENT

1. The Respondent's application under Rule 71 of the Employment Tribunals Rules of Procedure 2013, dated **12 January 2021** for reconsideration of the judgment sent to the parties on **30 December 2020** is refused.

## REASONS

2. There is no reasonable prospect of the original decision being varied or revoked (within the meaning of Rule 72(1) of the Employment Tribunals Rules of Procedure 2013) due to the following:
3. The Respondent advances two bases for the application: (1) new evidence; and (2) that the decision is unjust on the basis that assumptions were made and that inaccuracies were factored into the decision.

### **Fresh evidence**

4. The Respondent seeks to rely on fresh documentary evidence (by way of a video, work schedules and various photographs) and prospective evidence (not provided) from a CCTV / IT expert. None of this evidence was presented at the full merits hearing. This evidence was in the Respondent's possession at the time of the full merits hearing and should have been presented as part of that hearing if she wanted it to be considered.
5. The ET3 response form provided by the Respondent was dated 3 July 2019 and the hearing of the matter was in December 2020. Both parties therefore had adequate time to prepare for the hearing and present any evidence they wished to present.
6. In any event, the new evidence presented would not have changed the tribunal's conclusion on the facts.

### Unjust decision

7. The other basis of the application is that the decision was unjust due to various matters, namely: (1) assumptions / inaccuracies; (2) that Mr Stock (the Claimant's father who represented her at the hearing) was permitted to make closing submissions after the Respondent's barrister had done so; (3) that the Claimant's reason for resigning (she said to become maternity nurse) is not believed by the Respondent; and (4) that the Respondent did not dismiss the Claimant out of spite.
8. As to the assumptions and inaccuracies, for the most part, the arguments made by the Respondent stem from findings made in the judgment which the Respondent disagrees with. The Respondent maintains her version of events, however as a matter of law, findings of fact are made on all the evidence heard at a hearing and are made on balance of probabilities. Therefore, whilst the Respondent is committed to her version of events, for the purposes of the judgment and determination of the case, the findings made are regarded as the true account of matters. Based on the arguments advanced, I am not convinced that any findings are wrong or that the interests of justice require the decision to be varied or revoked.
9. In various respects, the Respondent seeks to advance new facts that were not advanced at the hearing. For example, that S was unable to walk at the date of the incident in which the Claimant lifted him by one arm. This is a matter which could have been raised at the hearing and Counsel for the Respondent could have challenged the Claimant on her account that S was "wandering" close to the door. Similarly, that the drop from the door was 0.5m is something which could have been challenged (and evidenced) at the time of the hearing.
10. However, in any event, such information would not have changed the overall conclusion reached. For example, even if the drop was less than 0.5m, there was still a risk of injury for a young infant if they fell out of the door. The lip of the threshold is not high enough to have prevented any such fall and a child (who by this date in March 2019 would have been approximately a year old) could topple out (from a seated position or a supported standing position) even if he was not walking by that time.
11. This is just an example. I have also reviewed the other matters described as assumptions and inaccuracies and in respect of those, I also find no basis for re-opening or changing the decision made following the hearing.
12. As to the complaint that Mr Stock had an unfair advantage over Respondent Counsel because he was permitted to make closing submissions after Counsel, I do not find that this was in unfair or unjust. The Overriding Objective under Rule 2 of the Employment Tribunal Rules 2013 requires tribunals to ensure, so far as is practicable, that parties are on an "equal footing" (amongst other matters). The Claimant was not professionally represented and the Respondent's Counsel was experienced and capable.
13. Further, there was no objection to the suggestion that Mr Stock make submissions after Counsel. The Respondent or her Counsel could have

objected to this if they considered this to be unjust. Further, Counsel could have asked to respond on any points raised by Mr Stock if he felt the need to do so. I would have permitted this and this is not unusual.

14. As to the reason the Claimant resigned, this is not material to the findings in the case and would not have affected the outcome.
15. Finally, in respect of the comment that the Respondent did not dismiss the Claimant out of spite, this was not something which the tribunal found or considered.
16. Having considered all the arguments made in the application, there is no reasonable prospect of the tribunal varying or revoking the original decision because the interests of justice do not require it.
17. Both parties had their opportunity to make their arguments, advance evidence and challenge any evidence they wished to challenge at the full merits hearing. The Respondent did so and had multiple witness statements, three live witnesses and professional representation. Counsel for the Respondent was able and experienced. There is a public interest in finality of litigation and it would not be in the interests of justice to reopen the matter in the circumstances. Therefore, the application to reconsider the decision is rejected.

2 March 2021

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Employment Judge **Dobbie**

JUDGMENT SENT TO THE PARTIES ON

22/03/2021

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J Moossavi

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FOR THE TRIBUNAL OFFICE