Case No: 2413579/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs P Haddock

Respondent: University of Chester

JUDGMENT

The claimant's application dated 1 March 2021 for reconsideration of the judgment sent to the parties on by email dated 15 February 2021 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in a seven-page letter, dated 1 March 2021, with attachments.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16,** the EAT chaired by Simler P said in paragraph 34 that:

> **"There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry…."**

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication, taking into account both parties to the litigation.

The Judgment

7. The claimant's claims were all dismissed at a final hearing between 11 and 18 January 2021. The claimant at that hearing was represented by counsel.

The Application

8. The claimant has sought a reconsideration of the decision in relation to one of the claims presented, namely that she was discriminated against contrary to s15 of the Equality Act 2010. No reconsideration of any other decision of the Tribunal is sought.

9. At the start of the final hearing (on 11 January 2021) the Tribunal were concerned that there were matters that required clarification in several parts of the pleaded claims. These were discussed with the parties. The claimant was present during this discussion, during which her counsel spoke on her behalf. The Tribunal permitted significant time to the claimant's counsel to take instructions before the claims were fully clarified.

10. In relation to the s15 claim, the claimant's representative confirmed that the impact of her disability on her work was "*confusion*" and "*lethargy*". These were the terms used. It is noted that a full record of this is omitted from the written reasons provided. It is however recorded in the notes of evidence taken. The claimant in her oral evidence gave evidence that her disability would make her unresponsive and withdrawn (written reasons paragraph 16.8.3).

11. Regardless of what the claimant had stated earlier in proceedings or put in pre-prepared written statements, the hearing proceeded on the basis of the argued claim as clarified and confirmed in the presence of the claimant by her legal counsel at the start of the hearing. The parties, including the respondent were directed to present evidence with relevance to the clarified pleaded case, in relation to this and all other clarifications.

12. The claimant's reconsideration application is predicated on an assertion that the Tribunal should have made "*broad ranging findings of fact on the Claimant's disabilities and how her impairments manifested within the respondent's workplace*". The Tribunal only considered whether the behaviours in evidence were consistent with "*lethargy*" and/or "*confusion*", or in the claimant's own words used in oral evidence, being "*withdrawn*" and/or "*unresponsive*". The fact that evidence in prior written statements that could

have been relevant to such a broader consideration was not challenged cannot be taken as acceptance of that evidence by the respondent, given it fell beyond the scope of the claim as clarified. Accordingly, the claimant's suggestion in the reconsideration application that such matters outside the scope of the clarified claims should be viewed as having been accepted as uncontested because they were not specifically disputed is misplaced.

Summary and Conclusion

13. The right to make a reconsideration application does not amount to an opportunity to re-argue a case, especially when that re-argument seeks to change the scope of the claim.

14. The matters raised by the claimant in the reconsideration application made are all matters that could, and given the claimant was represented should, have been raised or identified at the hearing. The claimant appears to be seeking to retrospectively widen the scope of the clarified claim to go beyond what was identified on the first day of the hearing. It could only be in an exceptional circumstance that it would not be in the interests of justice to permit a party to re-argue a case where doing so disturbs a clarification of the claim which the claimant's representative gave, with the benefit of taking specific instructions on the point, at the outset of the hearing.

15. Having considered the claimant's application I am satisfied that it does not appear to have any reasonably prospect of justifying an exception to the rule of finality in litigation. Accordingly, there is no reasonable prospect of the original decision, which dealt with the claim as pursued at hearing, being varied or revoked.

16. The claimant's application for reconsideration is refused.

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Employment Judge Buzzard

15 March 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

25 March 2021

FOR THE TRIBUNAL OFFICE