



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE K ANDREWS
MEMBERS: Ms B Brown
Ms B Leverton

BETWEEN:

Ms J Simpson

Claimant

and

Air Business Limited

Respondent

ON: 19 & 20 April 2021

Appearances:

For the Claimant: In person
For the Respondent: Miss H Williams

RECONSIDERATION JUDGMENT

1. The claimant's application (at paragraph 3 of the application dated 29 October 2019) for a reconsideration of the findings in the Judgment dated 11 September 2019 that:
 - 1.1. the respondent had a genuine belief that there had been an irretrievable breakdown in the employment relationship and had reasonable grounds for that belief; and
 - 1.2. the decision to dismiss was not materially or significantly influenced by the protected act;is refused.
2. The claimant's application (at paragraph 3 of that application) for a reconsideration of the findings in that Judgment that:
 - 2.1. her blameworthy conduct contributed to that dismissal and compensation will be reduced accordingly by 60%; and
 - 2.2. the detriments (other than dismissal) were materially or significantly influenced by the protected act;

will be considered by the Tribunal at a further reconsideration hearing on 26 July 2021.

REASONS

1. In this matter, following a hearing in May 2019, the Tribunal found that the claimant was unfairly dismissed but that a contributory fault deduction of 60% would apply to any compensation awarded. The claim of victimisation was unsuccessful. A Judgment and reasons dated 11 September 2019 were sent to the parties on 15 October 2019. The claimant submitted a request for a reconsideration on 29 October 2019.
2. The power to reconsider is contained in rule 70 of the Employment Tribunal Rules 2013 which states:

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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
3. A Reconsideration Judgment dated 13 November 2019 was sent to the parties on 16 December 2019. The vast majority of the claimant's application was refused as there was no reasonable prospect of the original decision being varied or revoked but comments were invited from both parties (sequentially) on the matters raised at paragraph 3 of the application.
4. Having considered those comments the parties were notified by letter dated 10 March 2020 that the application for a reconsideration would be considered at a 1-day hearing which was, after some unavoidable delays, listed for 19 April 2021. Unfortunately Ms Brown was unable to attend on the day and consideration was given to proceeding, with the parties' consent, without her but it then became possible (with Miss Williams's assistance in rearranging her diary) to use 20 April 2021 which had been listed for an in chambers meeting if required.
5. It was only during this Hearing that the exact basis of the claimant's application and in particular which parts of the Judgment she is seeking be reconsidered, became clear.
6. In summary, the claimant says that handwritten notes of Ms Satterthwaite disclosed by the respondent following the original Hearing (in response to a subject access request) show that Ms Satterthwaite's evidence to the Tribunal that she had refused to disclose to the claimant during her employment earlier documents (the Born investigation report, notes of a former HR Director and emails from 2014) out of a desire to help the claimant put past matters behind her, was false. She says that the notes show her real reason was because she believed their disclosure may prejudice a potential Tribunal. The claimant says therefore that the Tribunal reached its findings on a flawed understanding of the position as well as reflecting adversely on Ms Satterthwaite's credibility.
7. The respondent has submitted a witness statement from Ms Satterthwaite (who is currently unwell and unable to attend any Hearing) which dealt with the reasons for non-disclosure of the notes during the Tribunal process and her recollection of the meetings/calls they refer to and her interpretation of them (broadly that the particular comments in question were in fact those of the claimant's union representative).

8. Having heard submissions from the claimant and considered the notes and Ms Satterthwaite's statement, the Tribunal concludes that even if the claimant's interpretation of these notes is correct and they show what she says they do about the motivation for non-disclosure of the earlier documents, they do not form the basis for any variation or revocation of the findings that the respondent (through Mr Taylor and Mr Hall) had a genuine belief that there had been an irretrievable breakdown in the employment relationship and had reasonable grounds for that belief. There was significant evidence, as set out in the detailed reasons for the Judgment, supporting those findings which would survive any such finding about the notes. For the same reasons, the finding that the decision to dismiss was not materially or significantly influenced by the protected act would similarly survive.
9. The Tribunal does recognise however that if the claimant is right about the meaning of the newly disclosed notes and their implication, that could at least potentially undermine the findings regarding contributory fault and any causal link between the other detriments and the protected act. As the respondent had not – through no fault of its own – understood that to be the claimant's argument (compounded by a remote hearing making it harder for Counsel to obtain ad hoc instructions), the respondent's application for an adjournment in order to consider its position and obtain those instructions - and if necessary further evidence - was granted.
10. Those remaining matters will therefore be considered at a further reconsideration hearing on **26 July 2021**. If the respondent wishes to file any further evidence it shall send copies to the claimant and the Tribunal no later than **5 July 2021** and if the claimant wishes to make any comment in reply to that evidence she shall send it in writing to the respondent and the Tribunal no later than **19 July 2021**.
11. In order to avoid further delay, a remedy hearing has also been listed for **13 December 2021** by which date it is hoped the claimant's appeal will be concluded.

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Employment Judge Andrews
20 April 2021