



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Saleem

Respondent: North East London NHS Foundation Trust

JUDGMENT FOLLOWING RECONSIDERATION

The claimant's application dated **31 March 2021** for reconsideration of the judgment sent to the parties on **18 March 2021** is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the reasons I set out below.
2. Under Rule 70 of the Tribunal Rules 2013 a Tribunal may reconsider a judgment where it is necessary in the interests of justice to do so. This discretion must be exercised judicially having regard to the interests of all parties and the principle that there should, so far as possible, be finality of litigation.
3. Where new evidence is submitted in the application for reconsideration the principles in Ladd v Marshall [1954] 3 All ER 745 CA should be applied. It must be shown that the fresh evidence could not have been obtained with reasonable diligence for use at the original hearing; that the evidence is relevant and is apparently credible and would probably have had an important influence on the hearing.
4. I have read carefully the Claimant's application and will explain why it does not pass the interests of justice test by reference to its paragraph numbers below.
5. Paragraphs 6-15: the Claimant argues that the Tribunal made a factual error that he had not claimed taxi fares previously. He relies in particular on not being required to go to external meetings after a certain date. Our findings were in relation to the whole of employment. In any event, even if we were wrong that the Claimant had made an expense claim before, this would be unlikely to change our decision. We found that the Claimant was a senior manager and had secured an agreement to use taxis from the finance director, a manager more senior than his line manager. This

was sufficient, in our judgment, for him to rely on the agreement and take taxis to work. This finding is not challenged.

6. Paragraphs 16-29 and 66-67. Further evidence is given about the Claimant's line manager, Mr Rafiq, and his resistance to taxi fares and the process of claiming and contacting the senior managers. In so far as this is new evidence it does not pass the Ladd test because it has not been shown it could not have been given at the hearing. This was all in the Claimant's knowledge at the time of the hearing. In any event, this evidence would not be likely to have changed our judgment for the same reasons set out above: we found the Claimant could have acted upon the agreement to get taxis to work that he had secured with the finance director, who was more senior than his line manager.
7. Paragraphs 30-37; 38-41; 42-45, 49-53, 56-59, 80-81, 85-87 all make arguments that go to the Claimant's contention that he should have been allowed to work from home. In our judgment, we agreed with the Respondent that other adjustments had been made to avoid the comparative substantial disadvantage that we found the Claimant faced at certain times. At paragraph 91-94 of the judgment, (applying Linsley and the principles summarised at paragraph 57 of the judgment) we found that reasonable adjustments had been made and therefore working at home did not need to be considered even though it was the Claimant's preference. Likewise at paragraphs 99-100 of our judgment, we found the disadvantage of sitting had been reduced and removed at work and we disagreed, as a matter of fact, that working from home made any difference to this. Nor did we make our decision based on the allegedly false premise that calls would be missed.
8. Paragraphs 46-47 and 83 relate to an allegation of victimisation which was not an issue in the case. Paragraphs 54-55 repeat allegations made at the hearing about the Respondent's failure to make adjustments. We considered the claim of failure to make reasonable adjustments before us and made findings accordingly. There is nothing in these paragraphs that mean it is in the interests of justice to look at those allegations again.
9. Paragraph 60-68, 74, 75-79 make further submissions as to harassment. In so far as new evidence is given, it fails the Ladd test because it has not been shown it could not have been given at the hearing. All the matters raised were within the Claimant's knowledge at the time of the hearing. We reached our judgment on harassment having considered the facts before us and there is nothing in these paragraphs or the Claimant's submissions as a whole that shifts the general principle that there should be finality in litigation. Further paragraphs 62-65 refer to harassment that does not relate to disability and we have no jurisdiction to hear those arguments.
10. Paragraphs 69-73 raise an argument about the referrals to OH being an act of harassment. This was not an issue before us. Even if it had been an element of the harassment allegation, our findings mean that it would not have succeeded. This is because we found, at paragraph 125 of our judgment, that the Respondent's referrals to OH were sensible steps for it to take. We would therefore have found they did not objectively meet

the threshold test in relation to dignity or the proscribed environment under section 26 of the Equality Act.

11. Paragraphs 75-79 and 82 are new arguments in an issue that was not before us. It is not in the interests of justice to open it now because the Claimant had every chance to set out his claim in writing, explain it at the preliminary hearing and further at the full hearing.
12. Paragraph 84 concerns a submission on credibility. This is very similar to the excellent final submissions made by the Claimant at the full hearing. We considered it then and where factual matters were in dispute we gave our reasons for making our findings of fact.
13. The remaining paragraph of the application summarise arguments already made and I do not therefore deal with them again.

Employment Judge Moor
Date: 20 April 2021