



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Pikes

Respondent: Mr M Pygott

CORRECTED JUDGMENT

The **RESPONDENT'S** application dated **5 April 2021** for reconsideration of the judgment sent to the parties on **1 April 2021** is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked.
2. The respondent's request for a reconsideration is, effectively, for the following reasons
 - a. That my findings were incorrect for reasons set out in the respondent's application. He seeks to provide further explanation of the events of 16 July 2020 including an explanation as to why my findings were incorrect.
 - b. That I was wrong to conclude that the **RESPONDENT** was drunk at the time
 - c. That the respondent's legal representation was inadequate and he was poorly advised.
 - d. That the respondent did not properly address the issue of dismissal because he was disturbed by wider allegations designed, he says, to blacken his character.
 - e. That he does have documentary evidence relating to holiday pay but he did not address this properly because he attended the hearing by telephone rather than by video.
 - f. That the claimant approached one of the respondent's witnesses before the tribunal and expressed herself in a manner that was judged to be threatening. (The respondent does not provide any further detail or explanation).
3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 says

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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”.

4. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, Her Honour Judge Eady QC said

“The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”

5. HHJ Eady also referred in that case to the rules for reconsideration set out in the previous Employment Tribunal rules of procedure:

“...the 2004 ET Rules , which governed the review of Judgments and other decisions; in particular, Rule 34(3) :

“Subject to paragraph (4), decisions may be reviewed on the following grounds only —

- (a) the decision was wrongly made as a result of an administrative error;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (e) the interests of justice require such a review.”

6. Those remain useful examples of the circumstances in which a reconsideration might be appropriate but are all, in reality, examples of circumstances where it may be in the interests of justice to reconsider the decision. It is also likely to include the circumstances where a party has been deprived of the right to a fair hearing.

7. The matters set out in paragraphs 2a – 2e above are not matters in respect of which the interests of justice require, or allow, me to reconsider the decision.

8. My Pygott rightly recognises in his application that matters relating to the asserted quality of his representation or advice are not matters that I can properly be concerned with in an application for reconsideration.

9. None of the evidential matters to which Mr Pygott refers relate to evidence that was not reasonably available at the time of the final hearing. I recognise that Mr Pygott was not represented until late in the day, but it is not uncommon in the Employment Tribunal for parties to prepare for and conduct complex matters wholly unrepresented and the orders relating to disclosure and production of documents were clear. Further, the basis of the claimant’s claim was clear and there was no good reason why the respondent could not

have addressed his mind to the evidence required to demonstrate his version of events.

10. In respect of Mr Pygott's attendance by telephone, while as noted in my judgment it was not ideal, there was no application to postpone the hearing and it would not have been proportionate to do so. Mr Pygott was at the hearing represented by counsel. I am satisfied that he was not prejudiced by not being able to attend by video.
11. Finally, I address the allegation about Ms Nunn being approached by the claimant. Ms Nunn's written evidence was brief and dealt predominantly with the character of the respondent. She was not at the pub on 16 July 2020. At the hearing, Ms Nunn gave additional evidence in chief and responded to re-examination that was substantial compared to the length of the cross examination. She gave full answers which did not significantly support or undermine either case. The evidence of Ms Nunn, in so far as it was relevant to my decision, was that it confirmed the opinion of Ms Banham that the claimant worked too many hours and appeared to prioritise earning money over her well-being.
12. The respondent's allegation about Ms Nunn being approached by the claimant before the hearing is vague. It does not allege that Ms Nunn's evidence was affected by that approach and it does not say what different evidence Ms Nunn would have given had she not been so approached.
13. On balance, in my view the interest of justice require that I do not reconsider my decision. The only potentially relevant points made by the respondent relate to his attendance by telephone and the allegation of an inappropriate conversation between the claimant and Ms Nunn.
14. In considering the interests of justice I must consider the interests of the claimant, the respondent and the wider public interest in the finality of proceedings.
15. I am satisfied that despite the issues relating to the telephone and the alleged discussion between the claimant and Ms Nunn, the respondent had a fair hearing.
16. I can understand that the respondent feels that he has not done himself justice but, unfortunately, that is as a result of decisions taken by the respondent in failing to provide all the relevant evidence he now says he has (whether witness evidence or documentary evidence). The interests of justice require finality in litigation and the respondent is not entitled to have another bite of the cherry in these circumstances.

Employment Judge Miller
28 April 2021