



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Fisher

**Respondent:** Department for Work and Pensions

Judgment was announced at a hearing on 23 October 2020 and sent to the parties on 15 January 2021. The claimant has made an application dated 5 November 2020 for reconsideration of that judgment.

## JUDGMENT

The claimant's application is refused. This means that the judgment still stands.

## REASONS

### **The judgment, reasons and reconsideration application**

1. At a hearing on 23 October 2020, I identified that the only complaint that the claimant could legally pursue was one of unfair dismissal. It was common ground that the claimant had been dismissed. I decided that the claimant's dismissal was fair.
2. The written judgment was sent to the parties, together with written reasons ("Reasons"), on 15 January 2021. By the time I had finished writing the reasons, the claimant had written to the tribunal requesting reconsideration of the judgment

### **Grounds for reconsideration**

3. The claimant's reconsideration grounds are set out in a list of bullet points, which I summarise as follows:
  - 3.1. My decision was based solely on the evidence of the two witnesses for the respondent.
  - 3.2. I prevented the claimant from asking certain questions and asked her to focus on questions that were relevant to the witnesses.
  - 3.3. I failed to consider the claimant's witness statement.
  - 3.4. It was unreasonable ("shocking") of Ms Qureshi to ignore some of the claimant's appeal arguments and much of the contents of her file on the

ground that she thought that they were irrelevant to the appeal against dismissal.

- 3.5. The respondent's managers would "force" employees to engage with measures such as occupational health referrals, employee assistance and stress reduction plans, which were used for an improper purpose.
- 3.6. Ms Qureshi misunderstood an important part of the Attendance Management Procedure and therefore could not reach a fair conclusion about whether or not Ms Regan had correctly followed that procedure.
- 3.7. Ms Regan's witness statement commented on the claimant's failure to attend the meeting on 11 October 2019, which should have had no bearing on the dismissal decision.
- 3.8. Ms Regan's decision was unreasonable because she did not properly read the claimant's file.
- 3.9. Ms Regan's evidence was contradictory about how much experience she had in making dismissal decisions. If she had the requisite experience, why, the claimant asks, did Ms Regan consult with Human Resources about her decision?
- 3.10. The Attendance Management Procedure requires that decisions on absence warnings should be "positive" and "case specific" and not automatic on the reaching of a trigger point. The manager giving the claimant's first formal warning had said that his hands were tied.

### **Relevant law**

4. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so". The making of reconsideration applications is governed by rule 71.
5. Rule 72(1) states that an employment judge must consider any application made under rule 71. If the judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application must be refused.
6. The rule 72(1) preliminary consideration is a mandatory step and must take place before the respondent is asked to respond and before the reconsideration hearing is listed: *T W White & Sons Ltd v. White* UKEAT 0022/21.
7. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

### **Conclusions**

8. I have examined each of the claimant's grounds for reconsideration. In my view, none of them raises any reasonable prospect of my revoking or varying the judgment. I address each in turn.

### Relying on only two witnesses

9. It is not correct to say that I relied on only two witnesses. I also took into account the evidence of the claimant. See Reasons paragraphs 14 to 17.

Preventing the claimant from asking questions

10. I did stop the claimant from asking questions on a particular topic. That was the decision referred to in paragraph 15 of the Reasons. The claimant has not put forward any new argument as to how those questions would have been relevant to the issues I had to decide.
11. I do recall asking the claimant to concentrate on questions that the respondent's witnesses would be able to answer. The claimant contends that this approach demonstrated that I was "extremely biased". I have not found the claimant's supporting arguments particularly easy to follow, but what I think she is getting at is that I should have investigated evident wrongdoing on the respondent's part that was the underlying cause of the claimant's stress, even if that meant going beyond the three issues that I identified at paragraph 11 of my Reasons. If that is the claimant's argument, I do not agree with it. As paragraphs 2 to 10 of the Reasons explain, the only part of the claim on which I could adjudicate was the complaint of unfair dismissal. I did examine the underlying causes of the claimant's stress, so far as Ms Regan and Ms Qureshi could reasonably have been expected to know about them. I did this in order to establish whether or not the respondent was obliged to "go the extra mile" (see, for example, paragraphs 22 to 26 and 89 of the Reasons). But in my view the issues properly reflected the statutory test for establishing the fairness or otherwise of the dismissal, and I remain unpersuaded that it was appropriate to allow evidence of matters that were irrelevant to those issues.

Claimant's evidence

12. As paragraph 14 of the Reasons explains, I treated the claimant's chronology as her witness statement with her consent. The claimant complains about the timing, but it would be quite normal in a case such as this for the respondents to give their oral evidence before the claimant confirms the truth of their statement on oath. Paragraphs 16 and 17 of the Reasons set out the approach I took to evaluating the claimant's evidence. I not only read her chronology but used it to make some findings of fact which I considered relevant. See, for example, Reasons paragraphs 23 to 26.

Ms Qureshi ignoring allegedly relevant matters

13. At paragraph 67.5 of the Reasons I recorded my finding that Ms Qureshi refused to consider the "bigger picture" including the appropriateness or otherwise of the claimant's misconduct warning. I also recorded that Ms Sinclair, the claimant's union representative, gave the impression of agreeing with Ms Qureshi's approach. A similar exchange is noted at paragraph 67.7. I also made findings about Ms Qureshi's analysis of the claimant's allegations of prior procedural shortcomings (see Reasons, paragraph 68). Paragraph 86 of the Attendance Management Procedures (also set out in the Reasons) made clear that the appeal manager should not reconsider the case in detail. It was not within her remit to go back over the full history. None of the claimant's reconsideration arguments begins to persuade me that Ms Qureshi's approach in this regard was unreasonable.

Forcing employees to engage

14. As I hope I made clear at Reasons paragraph 82, the claimant was not forced to engage with occupational health, or the Employee Assistance Programme or the making of a stress reduction plan. And at paragraph 88, I expressed my view that

Ms Regan and Ms Qureshi were reasonably entitled to disagree with the claimant's generalised accusation that these measures were being used for an improper purpose. In her reconsideration application, the claimant has repeated these two points, again, in very general terms. That is not going to make me alter my original conclusion.

#### Ms Qureshi misunderstanding the policy

15. I have decided to engage with this reconsideration ground without rechecking my notes of Ms Qureshi's oral evidence. That would involve obtaining the paper file which would cause further delay. The claimant says that Ms Qureshi told the tribunal that managers should issue a warning on return from absence after reaching the 8-day trigger. If that is what Ms Qureshi said, it would certainly be a misunderstanding of the policy. But what Ms Qureshi correctly understood was that, if the manager who issued the initial warning had said that his "hands were tied", the claimant could have referred to that comment when appealing against the warning (see Reasons, paragraph 68). More fundamentally, even if Ms Qureshi had misunderstood the policy applicable to the beginning of the process, that was only of limited relevance to what Ms Qureshi had to decide. She was required to focus on the decision made by Ms Regan. There was nothing to suggest that Ms Qureshi misunderstood the part of the policy that applied to dismissal or appeal decisions.

#### Non-attendance at the 10 October meeting

16. The claimant's argument on reconsideration is the same as the one she advanced at the hearing. She contended that her non-attendance at the meeting should not have been any part of the reason for dismissal. I found that it had not been part of the reason (Reasons, paragraph 81).

#### Failure to read the file

17. I found that Ms Regan did make a reasonable effort to read the file. See, for example, her investigation into Ms Sinclair's representations about unwanted contact (Reasons, paragraphs 57 and 86). The claimant argued that Ms Regan should have spotted the "hands are tied" comment at the time of issuing the first warning. If that is what the claimant is now arguing, I have already dealt with it: see Reasons, paragraphs 37 and 56.

#### Ms Regan contacting Human Resources

18. I recall that Ms Regan said that she spoke to Human Resources before reaching her decision. I cannot now remember what, if anything, I made of that fact in my own deliberations. Looking at the argument afresh, I do not see anything inherently contradictory or suspicious about an experienced manager seeking Human Resources advice before deciding to dismiss an employee. There is nothing in this point that could cause me to alter my original judgment.

#### "Hands are tied"

19. The only new argument that appears under this heading is that the Attendance Management Procedure requires the circumstances of an individual employee's case to be taken into account before issuing a warning. A manager saying that his hands are tied betrays a failure to follow that approach. I was already alive to the significance of that alleged comment. Paragraph 37 of the Reasons explains how I dealt with it.

**Disposal**

20. Having concluded that there is no reasonable prospect of the judgment being varied or revoked, I must refuse the claimant's reconsideration application.

Employment Judge Horne  
12 May 2021

SENT TO THE PARTIES ON  
14 May 2021

FOR THE TRIBUNAL OFFICE