



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Egbujie

Respondent: Mid and South East Essex NHS Foundation Trust

Before: Employment Judge O'Brien

JUDGMENT FOLLOWING RECONSIDERATION

The claimant's application dated 9 May 2021 for reconsideration of the judgment sent to the parties on 26 April 2021 is refused.

REASONS

1 By email sent at 9:53pm on 9 May 2021, the Claimant requested reconsideration of a judgment sent to the parties on 26 April 2021.

2 The application was submitted in time, and appears to have been copied to the Respondent as required by rule 71 of the Employment Tribunal Rules of Procedure 2013.

3 The claimant's application can be summarised thus. The Tribunal did not give enough consideration to her injury to feelings. The witness statements showed Ms Ncube's bias and ill will towards the claimant. The witness statements were also inconsistent with each other. The claimant comparator was more favourably treated than she was. The claimant was misled by the Responded solicitor about the relevance of certain patient complaint evidence. The respondent misled the tribunal in respect of other evidence. The tribunal should review certain aspects of the evidence and should conclude that the claimant was in fact the victim of direct discrimination.

Relevant Rules on Reconsideration

4 The Employment Tribunals Rules of Procedure 2013 provide as follows:

71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 Process

(1) An Employment Judge shall 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Analysis

5 I was chair of the tribunal which heard the claimant's case. We were aware that the claimant was gravely upset by the treatment complained about, and took that fully into account when reaching our decision.

6 The points made by the claimant about the respondent's witnesses, the respondent's evidence and the respondent's actions at the material time were points which were either made or ought to have been made at the hearing. There were in any event matters which we took into account when reaching our decision.

7 It is correct to say that the claimant requested disclosure of documents relating to a complaint made about the claimant, including the drugs chart of the patient in question, and that the respondent's representatives responded that 'the patient's condition is not in issue in this case'. We did make mention of the complaint in question in its reasons. However, we took great pains to make clear that we were concerned with the mere fact of the complaint and not whether there was ultimately any merit in it.

8 In summary, the points made by the Claimant in her application seek to reargue the appeal and disclose nothing in any event which could materially undermine our decision. The application is therefore refused on the grounds that there are no

reasonable prospects of the judgment being varied or revoked.

Employment Judge O'Brien
Date: 24 May 2021