

Case Numbers: 3307362/2018, 3334606/2018,
3335635/2018, 3303770/2019, 3314352/2019,
3319883/2019, 3323607/2019, 3300074/2020,
3302684/2020, 3303556/2020.



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs O Swieca

v Unique Employment Services Ltd

JUDGMENT

Under Rule 71(1) and (3) of the Employment Tribunal Rules of Procedure 2013

The claimant's application dated 2 February 2021 for reconsideration of the reserved judgment sent to the parties on 21 January 2021 is refused.

REASONS

1. The claimant has applied for reconsideration of my reserved Judgment and Reasons dated 17 December 2020 and sent to the parties on 21 January 2021 following a three-day hearing on 21 to 23 September 2020 (the third day in chambers).
2. By rules 70-73 of the Employment Tribunals Rules of Procedure 2013, parties may apply for reconsideration of judgments made by a tribunal. The sole ground upon which a judgment may be reconsidered is that it is necessary in the interests of justice to reconsider it.
3. Rule 71 provides that an application must be sent within 14 days of the date on which the decision was sent to the parties. The application must be in writing and must set out why reconsideration of the original decision is necessary.
4. By rule 72(1), the application to have a decision reviewed shall be considered, where practicable, by the employment judge who made the decision, or who chaired the tribunal which made the decision. The judge shall refuse the application if he considers that there is no reasonable prospect of the decision being varied or revoked.
5. In her application of 15 pages (86 numbered paragraphs), the claimant seeks a reconsideration of the tribunal's decision on the asserted grounds that can be more generally categorized as: a) making incorrect findings of

fact; and b) failing to apply the law correctly.

6. Much of the claimant's application is seeking to challenge the factual conclusions I reached on the evidence before me. As I made clear in my Judgment and Reasons, I did not find the claimant to be a credible witness. In short, I regarded much of her evidence and her assertions to be, quite simply, unbelievable (or rather "implausible" – see paragraph 15). I reached the findings that I did after careful consideration and analysis of all the evidence (including all the documentary evidence) before me. The claimant's assertion that I have applied the law incorrectly is for the most part dependent on the proposition that I have reached incorrect findings of fact. In essence it is a challenge based on the premise that I reached findings of fact that happened to be favourable to the respondent's case and not that of the claimant.
7. I should add that I wholly reject the assertion made by the claimant in her second unnumbered paragraph headed "Introduction". Having reviewed the file, the claimant made an application to postpone the hearing on 9 September 2020 by email. The reason given was that the COVID restrictions in place did not allow individuals to attend such a Hearing. She did not make any mention of having COVID symptoms at that time. That application was refused by the REJ on the basis that attendance at the tribunal hearing was a lawful excuse under the relevant Regulations imposing restrictions. On 17 September 2020 she applied for reconsideration of that decision based primarily on a repeated assertion that attendance at the tribunal was not permitted under the Regulations even though the REJ had explained previously that it was lawful. Again there was no mention or suggestion that the claimant was suffering COVID symptoms in her communications. In response to the reconsideration request, EJ Manley informed the parties that the REJ's previous decision regarding the postponement request remained in place and that the hearing would proceed as listed. Accordingly, it does not appear there was any such 'note' produced in advance of the Hearing.
8. In any event, the claimant did not display any obvious signs of illness (COVID19 or otherwise) throughout the two days she was present at the tribunal and appeared entirely able to function properly during her evidence and the Hearing generally. Furthermore, the claimant did not produce sufficient medical evidence to this effect either at the start of the Hearing, on day two of the Hearing or subsequently.
9. Putting aside the issue of relevance, paragraph 44 (and sub-paragraphs 44a to 44g) is one example of an attempt within the reconsideration application to introduce new evidence or expand upon existing evidence that was available at the time of the hearing. I am satisfied that it is not appropriate for the tribunal to consider this further information nor does it provide grounds for reconsideration of the tribunal's decision in the 'interests of justice' (r70 of the Employment Tribunal Rules 2013) not least

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because it should have been produced in advance of the hearing and, in any event, has no material bearing on the facts or decision that I have reached.

10. I reached my unanimous findings of fact and Judgment on the basis and in the light of all the evidence presented at the Hearing. Having carefully considered the claimant's application for reconsideration I am satisfied that it is no more than an attempt by the claimant to re-litigate, without proper cause, an entirely reliable decision that is not to her liking.
11. The fact that the decision went against the claimant and that she was unsuccessful in persuading me otherwise is no basis for me reconsidering my decision.
12. I have therefore, for the reasons given above, decided to reject this application for reconsideration. I do so because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Wyeth

Date: 27 May 2021

Judgment sent to the parties on

15 June 2021

For the Tribunal office