



EMPLOYMENT TRIBUNALS

Claimant

Miss Eileen Gleeson

v

Respondent

The Royal British Legion

CLAIMANTS APPLICATION FOR RECONSIDERATION OF JUDGMENT

DECISION on part 8 of Application only

1. The Claimant applied for reasons of the judgement dismissing her claims and those reasons were sent on the 5 March 2021.
2. On the 18 March the Claimant wrote to the Employment Tribunal asking for reconsideration of the judgement, and attaching a file setting out the grounds of application. That file could not be opened and the Claimant was therefore asked to resend the grounds of her application. The Claimant resent her application on the 4 May 2021.
3. The application for reconsideration is made under rule 71 of the Employment Tribunal's Rules of Procedure. The process under rule 72 is for the Judge who chaired the full tribunal to consider the application and determined, first of all, whether he or she considers that there is no reasonable prospect of the original decision being varied or revoked. If I am of that view, the application must be refused, otherwise the views of the other parties to the case must be sought.
4. Under rule 71, 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.
5. The Claimant applies for reconsideration of the dismissal of her claims setting out eight different identifiable reasons within the narrative of her grounds. I have considered each one of the first seven grounds separately as well as considering the application as a whole, and my decision was sent to the parties.
6. Following the issuing of my decision on the application, the claimant has written in pointing out that a further matter, the eighth issue, concerning her claim for automatic unfair dismissal for asserting a statutory right had not been addressed.

7. I have therefore considered this part of her application and for the reasons I set out below I do not consider that there is any reasonable prospect of the original decision in this case being varied or revoked on that ground, and therefore, I refuse the application for reconsideration on that ground, as well as on the application as a whole.
8. In approaching the application for reconsideration I have re-considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “*An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden* [2010] ICR 743, para 17 *the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”*

Reasons For Refusing The Claimant’s Application

9. Issue: The assertion of a statutory right to be accompanied to the meeting on 17/12/18.

The claimant has stated in her application that she was not aware of the need to use the word ‘representative’ rather than an independent observer. She says she has been advised that she should not have attended the meeting alone and refers to a request to postpone the meeting.

10. In my judgment, I determined that the claimant had not asserted a statutory right to be accompanied within the meaning of the statutory provision. (paragraph 173 of Judgment) and that in any event, even if that was wrong, that what she had said, in respect of an independent observer had no effect whatsoever on the decision to dismiss her (paragraph 174).

Decision; I have considered whether, either alone or read as a whole with the rest of the application, there are any reasonable prospects of varying or revoking any part of my judgment, in respect of this part of the claimants application and I determine that there is no reasonable prospect of me doing so in this case. The claimant had every opportunity to put her evidence forward and did so, and did not suggest that she had said that she wanted to be accompanied by either a work colleague or a trade union representative to any specific meeting. Her application does not contain new evidence or information

that would affect the findings of fact made or the conclusions I drew from the facts.

Employment Judge Rayner
Date: 11 July 2021

Sent to the Parties: 26 July 2021

FOR THE TRIBUNAL OFFICE