EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Carroll-Cliffe**

Respondent: **Pembrey and Burry Port Town Council**

RECONSIDERATION DECISION

The claimant's application dated 25 June 2021 for reconsideration of the Judgment dated 30 May 2021 is refused.

REASONS

The reconsideration applications

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the liability judgment. The application says:

"The claimant believes that it is necessary for the judgment to be varied due to an analysis of the following submissions not being considered:

- *The two versions of the letter of the 12 March 2017 at pages 437-440 of the bundle and pages A1-A4 and A5-A13 of the supplementary bundle referred to at paragraphs 14 and 21 (first bullet point on page 13) of the claimant's submissions and at paragraph 15 of the respondent's submissions.*

EJ Harfield has failed to analyse these documents which in the claimant's case are central to her claims. It is the claimant's view that this document evidences issues of credibility of the Respondent's witnesses.

In accordance with rule 70 of the ET Rules, it would therefore be in the interests of justice to vary the judgment by entering a finding of fact on the above outstanding submission in relation to the above listed evidence. We further consider that making the order requested would be in accordance with the overriding objective because it would ensure that the

parties are on an equal footing and avoids any delay, so far as compatible with proper consideration of the issues."

The law

2. An application for reconsideration is an exception to the general principle that (subject to an appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Under Rule 72(1) I may refuse an application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

Decision

4. Under Rule 61 of the Employment Tribunal Rules of Procedure a Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing. Rule 62(1) provides that the Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural and in the case of a decision in writing, the reasons shall also be given in writing. Under Rule 62(5) in the specific case of a Judgment, the reasons shall: "*identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues."*

5. As the Court of Appeal recently reiterated in *Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601*, the point of the rule, in relation to Judgments, is to enable the parties to know why they have won or lost. The Court of Appeal re-stated the classic observation from *Meek v City of Birmingham District Council* [1987] IRLR 250:

   "The duty of an industrial tribunal is to give reasons for its decision. This involves making findings of fact and answering a question or questions of law. So far as the findings of fact are concerned, it is helpful to the parties to give some explanation of them, but it is not obligatory. So far as the questions of law are concerned, the reasons should show expressly or by implication what were the questions to which the industrial tribunal addressed its mind and why it reached the conclusions which it did, but the way in which it does so is entirely a matter for the industrial tribunal."

6. The claimant has been represented throughout out the proceedings. The issues to be decided in the case were set out in the agreed list of issues which the written Judgment faithfully addresses. The claimant won her constructive unfair dismissal and constructive wrongful dismissal

complaints. She did not succeed in her protected disclosure complaints or her breach of contract (wages) claim. The written Judgment explains why the claimant won what she won and lost what she lost. She did not succeed in her whistleblowing complaints principally because the Tribunal ultimately concluded she had not made qualifying protected disclosures. That decision did not depend on the provenance of the two versions of the grievance letter (it was based on the original version which it was accepted the claimant had submitted). The conclusions about the breach of contract (wages) claim did not relate to that grievance letter. The claimant's constructive unfair dismissal claim succeeded in relation to many of the pleaded issues (allegations of breach of trust and confidence) relating to the handling of the claimant's grievance summarised at paragraph 252(d), (e), (f), and (j)(ii). The detailed reasons are set out in the Judgment. The two different versions of the letter of 12 March 2017 was not a specific pleaded issue / in the list of issues (for example, as being an allegation of breach of trust and confidence) that the Tribunal was obliged to expressly address in its reasons.

7. The written Judgment therefore complies with Rules 61 and 62 and the underlying legal principles relating to the provision of reasons. The written Judgment clearly identifies the issues which were determined (following the agreed List of Issues) and sets out the Tribunal's decision in relation to the particular complaints the claimant brought, and the reasons why she won or lost.

8. There has not been a failure to analyse documents that are "central to the claimant's claim." The written Judgment is the written reasons that the Tribunal produces to explain its decision on the issues before it; it is not, and is not intended to be a comprehensive record of the Tribunal's evaluation of every point put before the Tribunal or considered by the Tribunal in our deliberations. To require a Tribunal to produce such a written record would be completely disproportionate (see Rule 62(4)). The written Judgment in this case already extends to 94 pages.

9. Furthermore, the reconsideration application does not address the point of how it is said the finding sought would result in the variation of the original decision reached, such that it could be said to be in the interests of justice to address the application. Based on what is currently before me, I cannot see how it could for the reasons already set out above. The issue of the credibility of the respondent's witnesses is raised in the application, but it is not said how that links through to ultimate decision in the case on the heads of claim that the claimant either won or lost.

10. Ultimately, it appears the claimant is seeking an additional finding of fact she would like to being expressly made and recorded, as opposed to varying the actual decision reached on the heads of claim. In my judgement, such a request does not accord with the purpose of written reasons or the purpose of a reconsideration application. They do not exist

as a means for a litigant to get a Judgment to say something they would like it to say about the other party. The way in which a Tribunal expresses its Judgment in its reasons is a matter entirely for the Tribunal provided the basic principles are satisfied.

11. In summary, I am satisfied on the basis of what is before me that there is no reasonable prospect of our original decision being varied or revoked. The application for reconsideration is therefore refused.

_____
Employment Judge Harfield
Dated: 5 August 2021

JUDGMENT SENT TO THE PARTIES ON 6 August 2021

.....
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche