



EMPLOYMENT TRIBUNALS

Claimant: Mrs R. Davies
Respondent: Gloucestershire Health and Care NHS Foundation Trust
Heard remotely on: Monday, the 12th October 2020
Tuesday, the 13th October 2020
Wednesday, the 14th October 2020
Thursday, the 15th October 2020
Friday, the 16th November 2020 and
Tuesday, the 19th January 2021

Before: Employment Judge David Harris
Mr Kayvan Ghotbi-Ravandi
Mrs Lesley Eden

Representation

Claimant: In person
Respondent: Miss Martina Murphy (Counsel)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. By an application received by the Employment Tribunal on the 14th April 2021, the Claimant applied for a reconsideration of the Tribunal's written judgment, with full reasons, dated the 28th March 2021.
2. The Tribunal notes that the grounds of the application for a reconsideration of the judgment are identical to the grounds of appeal to the Employment Appeal Tribunal attached to the Claimant's Notice of Appeal dated the 19th April 2021.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. It is accepted that the Claimant's application was received within the relevant time limit.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The grounds relied upon by the Claimant can be summarised as follows:
 - 5.1 in paragraph 2 of its written reasons, the Tribunal made an error concerning the date of a Telephone Preliminary Hearing and a

- further error in stating that the Claimant's claim for unpaid wages was withdrawn at the Telephone Preliminary Hearing;
- 5.2 in paragraph 9 of its written reasons, the Tribunal omitted to state facts relating to the Claimant's job duties;
- 5.3 in paragraph 16 of its written reasons, the Tribunal incorrectly stated that the Claimant had requested access to a quieter office;
- 5.4 in paragraph 20 of its written reasons, the Tribunal omitted to state that the Respondent's witness, Jim Stone, was a Union Representative;
- 5.5 in paragraph 21 of its written reasons, the Tribunal failed to acknowledge "*much crucial Tribunal Hearing Bundle evidence*" and thereby demonstrated unfair bias towards the Respondent;
- 5.6 in paragraph 24 of its written reasons, the Tribunal incorrectly stated the Claimant's job title when she started work for the Respondent;
- 5.7 in paragraph 25 of its written reasons, the Tribunal incorrectly stated the outcome of an internal review that had taken place on the 26th June 2014 and has omitted to state the date when Toni Cooper commenced her employment with the Respondent;
- 5.8 in paragraph 27 of its written reasons, the Tribunal omitted to state that the Claimant had a supervision meeting with Sarah Doherty on the 18th July 2014;
- 5.9 in paragraph 28 of its written reasons, the Tribunal has omitted to state the conclusion of an occupational health report dated the 21st August 2014 and failed to acknowledge (i) that the Respondent did not arrange for LRMs ('local resolution meetings') to be recorded, (ii) that the Claimant was not required to take minutes at meetings and (iii) that the Claimant had moved to an adjoining office;
- 5.10 in paragraph 29 of its written reasons, the Tribunal omitted to make reference to a report at page 103 in the Hearing Bundle;
- 5.11 in paragraphs 30 and 31 of its written reasons, the Tribunal omitted to state (i) that in August 2015 the Claimant was informed that Jim Stone would be joining the team and would be sitting at her desk in the adjoining office and (ii) that the Service Experience Department had acquired a new office and incorrectly stated that Sarah Doherty had advised her to wear ear defenders;
- 5.12 in paragraph 32 of its written reasons, the Tribunal omitted to refer to evidence contained in the Tribunal Hearing Bundle relating to a team meeting on the 3rd September 2015, a supervision meeting on the 24th September 2015 and email correspondence with Sian Waygood;
- 5.13 in paragraph 33 of its written reasons, the Tribunal omitted to refer to an undated referral at pages 119-121 in the Tribunal Hearing Bundle;
- 5.14 in paragraph 34 of its written reasons, the Tribunal omitted to refer to a relevant section of a report by Professor Hawley and to refer to oral evidence that the Claimant gave the Tribunal regarding a discussion that she had had with Professor Hawley;

- 5.15 in paragraph 35 of its written reasons, the Tribunal made an error in its decision that a reasonable adjustment had been made for the Claimant in March 2016;
- 5.16 in paragraph 36 of its written reasons, the Tribunal omitted to refer to letter and email correspondence between the Claimant and Sian Waygood;
- 5.17 in paragraph 37 of its written reasons, the Tribunal omitted to refer to a referral form dated the 29th June 2016 and failed to acknowledge that there was another office that the Claimant could have used instead of having to wear earphones at work;
- 5.18 in paragraphs 38 to 40 of its written reasons, the Tribunal failed to acknowledge the outcome of a case conference held on the 23rd November 2016;
- 5.19 in paragraph 41 of its written reasons, the Tribunal omitted to refer to the Claimant's email to Jim Stone sent on the 2nd December 2016 and reached wrong conclusions regarding reasonable adjustments arising from the meeting that took place on the 2nd December 2016 and correspondence with Jim Stone, thereby demonstrating bias towards the Respondent;
- 5.20 in paragraph 42 of its written reasons, the Tribunal omitted to refer to a letter that the Claimant emailed to Dr Bailey on the 13th December 2016;
- 5.21 in paragraph 44 of its written reasons, the Tribunal failed to note a relevant passage from a report made by Jim Stone after his meeting with the Claimant on the 10th March 2017;
- 5.22 in paragraphs 45 and 48 of its written reasons, the Tribunal showed unfair bias towards the Respondent;
- 5.23 in paragraph 49 of its written reasons, the Tribunal made an error as to whether a particular desk in the office was in the quietest corner of the room;
- 5.24 in paragraph 51 of its written reasons, the Tribunal omitted to refer to (i) part of the telephone conversation between the Claimant and Angie Fletcher on the 12th July 2018 and (ii) the Claimant's reasons for declining Ms Fletcher's offer of a move to the Senior PALS desk;
- 5.25 in paragraph 52 of its written reasons, the Tribunal omitted to refer to the Claimant's complaint about ongoing difficulties with noise levels in the office and failed to note relevant information from the return-to-work interview at pages 164 and 170-174 in the Tribunal Hearing Bundle, thereby demonstrating bias towards the Respondent;
- 5.26 in paragraph 53 of its written reasons, the Tribunal omitted to refer to questions that occupational health were asked in August 2018, thereby demonstrating bias towards the Respondent;
- 5.27 in paragraph 54 of its written reasons, the Tribunal demonstrated bias towards the Respondent;
- 5.28 in paragraph 55 of its written reasons, the Tribunal failed to acknowledge that the Respondent had been made aware of what reasonable adjustments were required;
- 5.29 in paragraph 56 of its written reasons, the Tribunal failed to acknowledge that the Claimant was required to return to the main

- office where she was not permitted to wear ear defenders and omitted to refer to an email that Ms Fletcher sent on the 13th September 2018;
- 5.30 in paragraphs 57 to 60 of its written reasons, the Tribunal fell into error in respect of its treatment of the DSE assessment form at pages 194 to 203 in the Tribunal Hearing Bundle;
- 5.31 in paragraphs 61 to 65 of its written reasons, the Tribunal failed to acknowledge that the Claimant had asked again to work somewhere else and that earphones were inadequate to protect her from the noise levels in the office;
- 5.32 in paragraphs 66 and 67 of its written reasons, the Tribunal demonstrated bias towards the Respondent in its treatment of the Claimant's Access To Work application;
- 5.33 in paragraph 68 of its written reasons, the Tribunal failed to take account of the Claimant's evidence regarding information she gave the Respondent at the commencement of her employment and thereby demonstrated unfair bias towards the Respondent;
- 5.34 in paragraph 69 of its written reasons, the Tribunal failed to acknowledge recommendations that had been made by occupational health and made an error of law regarding the responsibilities of the Respondent towards the Claimant;
- 5.35 in paragraph 70 of its written reasons, the Tribunal made an error as to the Claimant's belief as to whether the Respondent would carry out reasonable adjustments for her and the question whether reasonable adjustments had been carried out, thereby demonstrating unfair bias towards the Respondent;
- 5.36 in paragraphs 71 to 76 of its written reasons, the Tribunal failed to acknowledge that the reason for the Claimant's sickness absences stated on the job reference was due to the Respondent's failure to provide reasonable adjustments;
- 5.37 in paragraph 77 of its written reasons, the Tribunal fell into error in respect of its treatment of the reference that had been provided by Ms Fletcher, thereby demonstrating unfair bias towards the Respondent;
- 5.38 in paragraph 78 of its written reasons, the Tribunal omitted to state that the Claimant had submitted a work grievance on the 1st March 2019;
- 5.39 in paragraph 79 of its written reasons, the Tribunal fell into error in respect of its treatment of the reasons why the Claimant had been on sick leave from the 1st November 2018;
- 5.40 in paragraph 80 of its written reasons, the Tribunal omitted to state that Ms Fletcher had confirmed receipt of the grievance on the 4th March 2019 and failed to acknowledge that the Respondent had confirmed that the Claimant would not be required to attend meetings with Ms Fletcher;
- 5.41 in paragraph 81 of its written reasons, the Tribunal made a finding of fact that requires further explanation;
- 5.42 in paragraph 82 of its written reasons, the Tribunal omitted to refer to email correspondence between the Claimant and Ms Lynch in March and April 2019, thereby demonstrating unfair bias towards the Respondent;

- 5.43 in paragraph 83 of its written reasons, the Tribunal omitted to state that the Respondent had reversed its decision concerning a friend of the Claimant attending a work grievance hearing following an appeal by the Claimant;
- 5.44 in paragraphs 84 to 87 of its written reasons, the Tribunal has omitted to refer to relevant evidence relating to the grievance hearing on the 29th April 2019 and its outcome, thereby demonstrating unfair bias towards the Respondent;
- 5.45 in paragraph 88 of its written reasons, the Tribunal omitted to refer to relevant email correspondence between the Claimant, Ms Lynch and Ms Naphthine;
- 5.46 in paragraph 89 of its written reasons, the Tribunal misquoted a note made by the Claimant and omitted to refer to an email from the Claimant to Ms Fletcher that was sent on the 12th June 2019;
- 5.47 in paragraphs 90 and 91 of its written reasons, the Tribunal failed to acknowledge that the Respondent wanted a meeting with the Claimant to discuss outstanding matters;
- 5.48 in paragraph 92 of its written reasons, the Tribunal omitted to refer to an email that the Claimant had sent to Ms Naphthine on the 2nd July 2019;
- 5.49 in paragraph 93 of its written reasons, the Tribunal has failed to acknowledge the full effect of correspondence between the Claimant, Ms Naphthine and Ms Edwards in July 2019 and reached a wrong conclusion regarding reasonable adjustments;
- 5.50 in paragraph 94 of its written reasons, the Tribunal omitted to state that the Claimant had informed Ms Naphthine that she was ready to return to work as soon as she was informed that all reasonable adjustments had been put in place;
- 5.51 in paragraph 95 of its written reasons, the Tribunal failed to acknowledge that the Claimant had received correspondence from the Respondent that she felt amounted to harassment and failed to acknowledge (i) email correspondence passing between Access To Work and Ms Fletcher in August 2019 and (ii) email correspondence passing between Ms Lynch, the Claimant, Ms Fletcher and 'Working Well' in August 2019;
- 5.52 in paragraph 96 of its written reasons, the Tribunal omitted to refer to (i) relevant email correspondence from Ms Lynch, Mr Benson and the Claimant and (ii) a meeting that took place on the 20th September 2019, thereby demonstrating unfair bias towards the Respondent;
- 5.53 in paragraph 98 of its written reasons, the Tribunal fell into error in respect of its interpretation of a letter from the Respondent to the Claimant dated the 25th September 2019;
- 5.54 in paragraph 99 of its written reasons, the Tribunal failed to acknowledge that the Respondent had overturned its work grievance decision and invited Ms Fletcher to attend a meeting with the Claimant;
- 5.55 in paragraph 100 of its written reasons, the Tribunal failed to acknowledge the period of time over which the Claimant had attended occupational health appointments and fell into error in respect of its treatment as to the law on reasonable adjustments;

- 5.56 in paragraph 101 of its written reasons, the Tribunal failed to acknowledge that in October 2019, the Claimant's request for reasonable adjustments was ongoing;
- 5.57 in paragraph 102 of its written reasons, the Tribunal failed to record that the Respondent had not made any reasonable adjustments for the Claimant and failed to note the abrasive tone of the letter from Ms Lynch to the Claimant dated the 18th October 2019, thereby demonstrating unfair bias towards the Respondent;
- 5.58 in paragraph 103 of its written reasons, the Tribunal omitted to refer to an email that the Claimant received from Ms Lynch on the 22nd October 2019, thereby demonstrating unfair bias towards the Respondent;
- 5.59 in paragraph 104 of its written reasons, the Tribunal has misquoted a letter that the Claimant sent to Ms Lynch on the 22nd October 2019, ignored large parts of the Tribunal Hearing Bundle and fell into error in its treatment of the law regarding the Claimant's claim of disability discrimination, thereby demonstrating unfair bias towards the Respondent;
- 5.60 in paragraph 105 of its written reasons, the Tribunal failed to acknowledge the apparent contradiction between Ms Lynch saying that she wanted to agree a supportive return to work for the Claimant, on the one hand, and, on the other hand, insisting that the Claimant attend meetings that were not required and at which Ms Fletcher would be present, thereby demonstrating unfair bias towards the Respondent;
- 5.61 in paragraph 108 of its written reasons, the Tribunal omitted to refer to an email from Ms Lynch to the Claimant that was sent on the 25th October 2019, thereby demonstrating unfair bias towards the Respondent;
- 5.62 the Tribunal's decision in respect of reasonable adjustments was contrary to the evidence in the case;
- 5.63 in paragraphs 126 to 131 of its written reasons, the Tribunal fell into error in identifying two distinct periods of time when the Claimant was at a substantial disadvantage due to a failure to implement reasonable adjustments and fell into error in respect of its decision-making regarding the claim that the Respondent had failed to make reasonable adjustments, thereby demonstrating unfair bias towards the Respondent;
- 5.64 in paragraph 132 of its written reasons, the Tribunal fell into error in respect of its decision as to whether it was just and equitable to extend time in respect of the disability discrimination claim;
- 5.65 in paragraph 135 of its written reasons, the Tribunal fell into error in respect of its treatment of the law and demonstrated unfair bias towards the Respondent;
- 5.66 in paragraph 136 of its written reasons, the Tribunal fell into error in respect of its treatment of the claim regarding the job reference that had been provided by Ms Fletcher;
- 5.67 in paragraph 137 of its written reasons, the Tribunal made material errors of law and demonstrated unfair bias towards the Respondent;

- 5.68 in paragraph 139 of its written reasons, the Tribunal failed to deal appropriate with the evidence regarding the Claimant's queries concerning her pay and fell into error in respect of its treatment of the issues regarding the NHS Injury Allowance, thereby demonstrating unfair bias towards the Respondent;
- 5.69 in paragraph 140 of its written reasons, the Tribunal fell into error in respect of its decision to dismiss the claim under section 15 of the Equality Act 2010, thereby demonstrating unfair bias towards the Respondent;
- 5.70 in paragraphs 141 to 146 of its written reasons, the Tribunal fell into error in respect of the dismissal of the claim of unfair constructive dismissal and thereby demonstrated unfair bias towards the Respondent.
6. The matters raised by the Claimant in her application for a reconsideration of the judgment have been considered in the light of all of the evidence and submissions presented to the Tribunal before it reached its unanimous decision as set out in its judgment and reasons dated the 28th March 2021.
7. Further, the Tribunal also reminded itself of the following propositions of law relating to an application for reconsideration of a judgment. The Employment Appeal Tribunal ("the EAT") in *Trimble v Supertravel Ltd* [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in *Fforde v Black* EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order*".
8. In respect of the first ground for a reconsideration of the judgment, it is correct that the Tribunal made an error in paragraph 2 of its written reasons concerning the date of the Telephone Preliminary Hearing that took place in February 2020. The correct date of the hearing was the 12th February 2020. That error was immaterial to the outcome of the Claimant's claims. As to those claims, they were identified as follows at the Preliminary Telephone Hearing on the 12th February 2020:

"By a claim form presented on 24 September 2019, the Claimant brought complaints of discrimination on the grounds of disability, unlawful deductions from wages and accrued but unpaid holiday pay, all of which the Respondent has defended. The Claimant accepted at this Hearing that she has now received her full entitlement to holiday pay and that she does not have a separate claim for unlawful deductions from wages, but instead seeks loss of earnings in respect of disability-related sick leave. The Claimant has been employed as an administration assistant by the Respondent, for approximately five and a half years. Since filing this claim, she has resigned on 21 November 2019 and has applied to amend her claim to include a claim of constructive unfair dismissal. There being no objection to that application by the

Respondent, it was granted. It was agreed that the Respondent's correct title is as above.

9. In paragraph 2 of its written reasons, the Tribunal noted that “*the claims of unlawful deduction from wages and unpaid holiday pay were withdrawn*” at the Telephone Preliminary Hearing on the 12th February 2020. Having regard to the discussion at the Telephone Preliminary Hearing, as recorded above, the Tribunal maintains that paragraph 2 of its written reasons represents a fair and accurate summary of the position regarding the claims for unpaid holiday pay and unlawful deduction from wages. In respect of the Claimant’s claim for unpaid wages arising from the successful element of her claim relating to reasonable adjustments, those losses will fall to be considered at the Remedies Hearing in due course.
10. In relation to the remaining grounds for a reconsideration of the judgment, which relate to matters that were fully ventilated and argued during the course of the final hearing that took place over six days, these grounds appear to the Tribunal to be, in effect, submissions that the Tribunal (i) made material errors of law in relation to its findings of fact, (ii) made errors of law in relation to the treatment of the facts of the case in its written reasons, (iii) demonstrated unfair bias towards the Respondent and (iv) made errors in relation to the law applicable to the claims brought by the Claimant.
11. If the errors of law contended by the Claimant have been made by the Tribunal, then they will fall to be corrected in the course of the appeal that has been brought by the Claimant and not by a review of the Tribunal’s judgment and reasons.
12. Accordingly the Tribunal refuses the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge David Harris

Date: 07 August 2021

Sent to the Parties: 10 August 2021

FOR THE TRIBUNAL OFFICE