



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Wood  
**Respondent:** BDSA Limited  
**Before:** Employment Judge Nicklin  
**Sitting at:** London Central  
**Date:** 27<sup>th</sup> August 2021

## JUDGMENT ON RECONSIDERATION

The Respondent's application dated 21<sup>st</sup> July 2021 for reconsideration of the reserved judgment sent to the parties on 7<sup>th</sup> July 2021 is refused.

### REASONS

1. By an email to the tribunal dated 21<sup>st</sup> July 2021 and copied to the Claimant's representative, the Respondent applied for reconsideration of the reserved judgment in this case, which was sent to the parties on 7<sup>th</sup> July 2021.
2. Although the Respondent explained in its email that there was a delay in identifying the judgment in its email system, the application was presented within the time limit specified by Rule 71 of the tribunal's Rules of Procedure.
3. I apologise to the parties for the delay in receiving this judgment on the application. This arose because of an administrative delay in the application being placed before a judge, after which point the application has been dealt with as promptly as possible.
4. The basis of the application is that the Respondent contends that the evidence of its witness, Ms Shankar, may have been mis-recorded. The Respondent refers specifically to paragraph 18.6 of the reserved judgment, which said:

*Whilst Ms Shankar explained that Mr Broom left the office (with his keys retained at the office) on 11<sup>th</sup> March 2020 and was then set up to work from home, she was not there on 26<sup>th</sup> March 2020 to be able to say what did or did not happen in the office.*

5. The Respondent says that Ms Shankar:

*contends that her evidence was that she was in the office that day as was Mr Chris Brown and that the two signatories to the claimants contract which was allegedly signed that day, were not at the office, but were working from their respective homes...and that there was evidence of that (albeit not in the bundle of documents) (sic).*

6. The Respondent says that it would be 'extremely unlikely' that the Claimant and Mr Broom would have both come into the office on 26<sup>th</sup> March 2020 as this was during the 'prevailing Covid lock down at that time'. The tribunal has therefore been asked to reconsider the reserved judgment because paragraph 18.6 of the reserved judgment is one of the factors given for the finding, on balance of probabilities, that the Claimant's employment contract was varied.
7. The application for reconsideration is refused, pursuant to Rule 72(1) of the tribunal's Rules of Procedure, because there is no reasonable prospect of the original decision being varied or revoked. This is because:
- 7.1. The application has confused the Respondent's evidence and contentions with finding of facts made by the tribunal on the balance of probability. Evidence has not been mis-recorded. It may be that Ms Shankar does not accept that the Claimant and Mr Broom met on 26<sup>th</sup> March 2020 at the office, but this was the evidence of the Claimant and that evidence was accepted. Paragraphs 18.1 and 18.4 of the reserved judgment explain this with reasons.
- 7.2. The Respondent's witness was not present before the Claimant and Mr Broom at the time the contracts were signed. Paragraph 18.6 confirms the fact that Ms Shankar was not in a position to comment on what occurred between the Claimant and Mr Broom on that occasion. As the reserved judgment explains, "she was not there...to be able to say what did or did not happen".
- 7.3. If the Respondent now says it has further evidence which could reasonably have been available at the hearing but was not in the bundle, it is too late for that to be adduced now the hearing has been completed and the decision and reasons given.
- 7.4. In any event, the findings of fact made are not affected by whether or not Ms Shankar was at the office at a particular point on 26<sup>th</sup> March 2020. It was common ground that she did not witness the meeting between Mr Broom and the Claimant. The Claimant's evidence about such a meeting has been accepted by the tribunal, on the balance of probabilities, and because of the other reasons set out in the reserved judgment.

Employment Judge Nicklin

Date 27<sup>th</sup> August 2021

JUDGMENT SENT TO THE PARTIES ON

27/08/2021.

FOR THE TRIBUNAL OFFICE