



EMPLOYMENT TRIBUNALS

Claimant: Miss Charlene Evans

Respondent: Lumina Investments Limited

JUDGMENT

The respondent's application by way of emails dated **14th and 25th February 2021** for reconsideration of the judgment sent to the parties on **12th February 2021** is refused.

REASONS

1. This is an application by the Respondent for reconsideration of the judgment sent to the parties on 14th January 2021 with written reasons sent to the parties on 12th February 2021.
2. The Tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
3. Under rule 71 an application for reconsideration must be made within 14 days from the date on which the judgment (or written reasons, if later) was sent to the parties. I accept that this application was clearly made in time.
4. The approach to be taken to applications for reconsideration was set out in the case of **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA** in the judgment of Simler P. The tribunal is required to:
 - 5.1 identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or

revoked refusing the application without a hearing at a preliminary stage;

- 4.2. address each ground in turn and consider whether there is anything in each of the particular grounds relied on that might lead the ET to vary or revoke the decision; and
- 4.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.

5. In paragraph 34 and 35 of the judgment Simler P included the following:

“A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration. Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

6. The Respondent, by application dated 14th February 2021, asserts that “there are significant findings of fact that we feel were not considered”. A reconsideration is therefore requested. The application for reconsideration was elaborated upon by the Respondent by way of separate email, dated 25th February 2021.
7. I consider the oral evidence of the parties as summarised at paragraphs 19 to 39 of the judgment. I considered the contents of the bundle and the written statements. Careful consideration of the evidence leads to the findings of fact at paragraphs 40 to 59 of the judgment. It is those findings that lead to the conclusions at paragraphs 60.
8. The Respondent makes a number of discrete submissions in respect of various paragraphs of the written reasons as below:
 - a) Para 46 – Timesheets – The Respondent invites the Tribunal to reconsider aspects of the evidence relating to the time worked by the Claimant following surgery. The Tribunal heard oral evidence on this issue and preferred the evidence of the Claimant, namely, that she undertook work on the days following her surgery. The submissions amount to little more than a disagreement with the finding I made having considered the totality of the evidence. The Respondent seeks to rely upon additional evidence in support of his submissions and has attached to his reasons for reconsideration email a statement from the Respondent’s payroll manager. The statement contains little more than a bare assertion that the Claimant had taken holiday. The evidence does little more than rehearse the Claimant’s case as advanced during the evidence at the hearing. In any event, the Respondent has failed to explain why the statement was not disclosed for use at the final hearing despite having been fully aware of the nature of the Claimant’s case. I therefore conclude that there is no prospect of this finding being varied or revoked;

- b) Para 48, 49, 50 and 51 – Wedding on 30th November 2019 – The submissions made by the Respondent rehearse their position at the hearing, a position that was carefully considered. The submissions amount to little more than a disagreement with findings that I have made, findings that, in my view, I was entitled to make on the evidence before me. The Respondent’s submissions therefore lead me to conclude that in respect of this issue there is no prospect of the finding being varied or revoked.
 - c) Para 54 – Redundancy Consultation – The Respondent takes issue with the finding that the process in respect of redundancy was unfair. I have outlined my reasons for such a finding clearly within the written reasons. I consider that there is no prospect of the finding being varied or revoked.
 - d) Para 60d – Redundancy Conclusion – The Respondent suggests that the period of consultation would have been less than a month. I concluded that one month is an entirely appropriate length of time to undertake a proper consultation. Both parties had ample opportunity to adduce evidence and make submission on this point at the final hearing. The Respondent’s request for reconsideration amounts to little more than a disagreement with my overarching conclusions and the Respondent’s submissions have no prospect of varying or revoking the findings/conclusions made.
 - e) Para 60f – Deduction from Wages – The Respondent sought to argue that the Claimant should be liable for any bookings made and unfulfilled on the night of the wedding. The argument was carefully considered on the evidence and the Respondent’s case on the issue rejected entirely – the Claimant’s position was preferred. The Respondent’s submissions therefore have no prospect of varying or revoking the findings/conclusions made.
 - f) Para 60g – Deduction from Wages – The Respondent’s submissions again amount to a disagreement with the findings made having heard the evidence. The reasons for preferring the Claimant’s position are outlined within the judgment. The Respondent’s submissions therefore have no prospect of varying or revoking the findings/conclusions made.
9. As outlined above, the Respondent effectively invites the Tribunal to relitigate matters that have already been determined. The vast majority of the submissions made and evidence relied upon were advanced by the Respondent at the hearing. Where there is fresh evidence referred to, I conclude that this will not have any impact upon the findings made or conclusions reached. I therefore conclude that there is no reasonable prospect of the original decision being varied or revoked and the application for reconsideration is refused at a preliminary stage.

Employment Judge **G Duncan**

Date 11th March 2021
JUDGMENT SENT TO THE PARTIES ON
12 March 2021

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FOR THE TRIBUNAL OFFICE