EMPLOYMENT TRIBUNALS

Claimant: **Ms. Marzena Stradomska-Slodcsyk**

First Respondent: **Alma Square Dental Limited**

Second Respondent: **Josefine Rytooja**

Third Respondent: **Zuzana Nemcik**

Employment Judge Shepherd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. A reserved judgment and reasons was sent to the parties on 20 September 2021. That judgment followed a hearing on 2,3,4,5 and 6 August 2021. The hearing had been before a full Employment Tribunal. The unanimous judgment of the Tribunal was that the claim that the claimant was subjected to detriments on the ground that she had made public interest disclosures was not well-founded and was dismissed. The claim of unauthorised deductions from wages was not well-founded and was dismissed.

2. The Tribunal considered a substantial amount of evidence which had been provided over a five-day hearing. A further date for deliberations of the Tribunal in chambers had taken place on 6 September 2021.

3. On 3 October 2021 the claimant wrote to the Tribunal requesting a reconsideration of the judgment.

4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

> "70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) on the application of a party, reconsider any judgment where it is necessary in the interests of justice

to do so. On reconsideration, the decision ('the original decision') may be confirmed, varied or revoked. If it is revoked it may be taken again.

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 or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations."

5. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a Judgment could be reviewed. The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J **in Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

6. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

> "Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before".

In the case of **Fforde v Black EAT68/80** where it was said that this ground does not mean:

> "That in every case where a litigant is unsuccessful 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 even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order".

7. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/81** where it was stated:

> "When you boil down what is said on (the claimant's) behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, 'justice' means justice to both parties. It is not said, and, as we see it, it cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation".

8. I have considered the contents of the claimant's application carefully. She refers to the time for the hearing being truncated and the first day of the hearing being lost as a result of technical issues and the appointment of a litigation friend for the third respondent. This was referred to in paragraph 5 of the reasons for the reserved judgment. I am satisfied that there was sufficient time to deal with all the oral evidence and a further day for deliberations of the Tribunal was taken.

9. The claimant then refers to the time allocated for cross examination being biased 3:1 to the benefit of the respondents. The claimant was given the opportunity during the course of the hearing to ask all the questions that she wished to ask and she indicated that she did not have any further questions. The claimant raised no issue during the hearing with regard to not having the chance to ask questions. In this case the initial burden of proof is on the claimant and it is not unusual in many cases that the cross-examination of the first witness called to give oral evidence takes substantially longer than that of the subsequent witnesses as the Tribunal and parties are then familiar with the documents when it comes to subsequent evidence. The claimant had been given time to ask all the questions that she wished to ask.

10. The claimant refers to paragraph 34 of the judgment in which it was stated that the claimant's evidence was poor and lacking in credibility and that she had failed to answer many of the questions and would regularly give a lengthy answer that did not cover the question that had been asked. The claimant, in her application for a reconsideration refers to thinking that sufficient weight was not put on the matters she tried to raise when asking questions. The claimant was clearly intelligent and articulate. The evidence she gave and the questions she asked were not affected by communication difficulties. She failed to deal with the identified issues.

11. The claimant refers to the quality of the interpreters. There were three different interpreters provided throughout the five-day hearing. This is not within control of the Tribunal. However, the Tribunal panel considered all the evidence carefully and I am satisfied that the claimant was not put at a disadvantage. She did not raise the quality of the second interpreter during the hearing. A further interpreter was provided on the final day. It was agreed that the claimant could be assisted by her son on that final day

and they were both able to deal with the evidence and questions without any significant communication difficulties.

12. The claimant also refers to higher weight been put on the arguments of the respondent's representative. This is not the case. The Tribunal gave careful consideration to all the evidence in the case and considered the issues raised by both parties. The claimant appears to raise concerns about the respondent's representative being a professional representative who was trained, experienced and skilled in cross-examination. She refers to her belief that the hearing procedures were not fair and were biased and, benefited the respondent. I appreciate that the claimant is unhappy that her claims did not succeed. However, there was no procedural or other substantive reasons why it would be in the interests of justice to rehear the evidence in this case.

13. This is an application for a reconsideration by the claimant whose claims did not succeed. It is an application which is clearly on the basis that the claimant feels she did not do herself justice at the hearing and she is seeking 'a second bite of the cherry'. The identified issues were considered very carefully by the Tribunal. Full consideration was given to all the evidence. The Tribunal reached the conclusion that the claims did not succeed.

14. The claimant refers to the calculation in respect of deductions made and the respondent's failure to pay two months' pay following termination of the agreement. The issues were set out following a Preliminary Hearing before Employment Judge Jones on 24 October 2019 at which the claimant was legally represented. Those issues and claims were discussed at the start of the final hearing and are as set out in the reserved judgment and reasons. There was no claim for notice pay brought by the claimant within the amended particulars of claim or the schedule of loss which were filed on her behalf by her then legal representative following the Preliminary Hearing before Employment Judge Jones. The issue of unauthorised deductions from wages is set out as being deductions from the claimant's wages in respect of sums due for work undertaken in April of £5,600. On 17 August 2020 the claims of unfair dismissal and for notice pay were dismissed upon withdrawal by the claimant.

15. The claimant refers to her lack of representation and that she perceives that higher weight was put on the arguments of the respondent's representative. The Tribunal is used to dealing with litigants in person. The fact that the respondent was legally represented is not a ground for reconsidering the judgment.

16. I have considered this application carefully. I have reached the view that a hearing is not necessary in the interests of justice. There is no reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

20 October 2021.