



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms P Hylton  
**Respondent:** Citizens Advice Waltham Forest Limited  
**Heard at:** East London Hearing Centre  
**On:** 7 October 2021  
**Before:** Employment Judge Burgher  
**Members:** Ms T A Jansen  
Ms P Alford

## Appearances

**For the Claimant:** In person  
**For the Respondent:** Mr A Griffiths (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

## RECONSIDERATION JUDGMENT

The Claimant' application to reconsider the judgment sent to the parties on 8 July 2021 is refused. It is not considered to be necessary in the interests of justice to do so. The original decision is therefore confirmed.

The Claimant is ordered to pay the Respondent the sum of £100 in respect of its cost arising from her unreasonable conduct in the litigation.

## REASONS

1. The Claimant applied to reconsider the Employment Tribunal judgment that was sent to the parties on 8 July 2021. Her reconsideration application letter, dated 21 July

2021, was six pages long consisting of numerous points why the judgment should be reconsidered.

2. The primary points for the reconsideration were that the Claimant was unaware of the details of a CVP hearing, having not received the 12 February 2021 notification; and that there were reasonable reasons for her non-attendance at the Tribunal on 7 July 2021.

3. The Claimant attached four documents to her application, namely

3.1 A letter from Thashi Innis 16 July 2021 relating to the offer of digital resources to the Claimant;

3.2 A redacted credit card statement from Ms Innis dated 14 July 2021;

3.3 A generic NHS test receipt card with barcode AAL 8707 4127 and the Claimant's name handwritten onto it. No further details were provided of this;

3.4 A 'to whom it may concern letter' dated 5 July 2021 from the Claimant's GP Dr Rebecca Gidley stating that the Claimant had been experiencing anxiety and would appreciate support breaks during the hearing.

4. Whilst the reconsideration letter was sent to the Respondent, the four appendices were not. Mr Griffiths did not have them to make his submissions before the Tribunal and he submitted, that on the evidence that was provided to him the threshold for sift to allow reconsideration was not met. He submitted that the Claimant's application to reconsider should not be permitted.

5. We did not permit Mr Griffiths to comment on the four appendices, which we took as read. On the face of it they did not evidence the Claimant's inability to attend on the Tribunal hearing on 7 July 2021 and therefore did not take matters further.

6. It was incumbent on the Claimant to evidence the good reason for non-attendance at the Tribunal on 7 July 2021 and she has not done so. The questions that Mr Griffiths asked the Claimant underlined the issues that the Tribunal had regarding her credibility which we found to be seriously wanting. The Claimant stated that she did not return a preliminary hearing bundle addressed to her to the post office and it must have been her uncooperative neighbour who did so. Our concerns about the Claimant's credibility and willingness to properly engage in proceedings remain unchanged to those we held about her failure to attend the Tribunal on 7 July 2021.

7. In the circumstances we do not reconsider the judgment. We have had regard to the submissions of the Claimant that she is a litigant in person; that she is very vulnerable; and that she is making serious claims of race discrimination and victimisation when considering whether it is in the interests of justice to reconsider. However, we conclude that in the circumstances it is not in the interests of justice to reopen the case. The Claimant was given a proper opportunity to have her case considered and did not attend without good reason.

8. Therefore the Claimant's application for reconsideration is refused and her claims remain dismissed.

### **Costs**

9. Following delivery of the reasons for reconsideration Mr Griffiths applied for costs on behalf of the Respondent totalling £600 (£500+ VAT) in respect of his attendance for the preliminary hearing only. He submitted that the Claimant was unreasonable in her conduct of the litigation. He stated that the Claimant's reconsideration application was made without full disclosure of documentation to them; that her approach to the litigation was unreasonable in returning the preliminary hearing bundle to the post office and that the costs proportionate in view of what was especially in the context of the Claimant's failure to comply with orders and attend the Tribunal previously.

10. The Claimant objected to the costs application and stated that it would be unreasonable for her to pay costs. She stated that she is earning £300 month working part-time and has outgoings of £800 month she also relies on family and friends to help pay expenses and that she has about that £1500 worth of savings. The Claimant stated that she would suffer hardship having to pay such costs.

11. Rule 76 of the Employment Tribunal rules states:

76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success; [or  
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(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins].(a)

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or

adjournment if—

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer's contract claim or application and that claim,

counterclaim or application is decided in whole, or in part, in favour of that party.

(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.

12. The Tribunal also has regard to the structured approach set out in the case of Millan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3 stage exercise at paragraphs 52:

*There are thus three stages to the process of determining upon a costs order in a particular amount. First, the tribunal must be of the opinion that the paying party has behaved in a manner referred to in Rule 40(3); but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be. Here, covered by Rule 41, the tribunal has the option of ordering the paying party to pay an amount to be determined by way of detailed assessment in a county court.*

13. The Tribunal therefore considered the following issues:

- 13.1 Has the putative paying party behaved in the manner proscribed by the rules?
- 13.2 If so, it must then exercise its discretion as to whether or not it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).
- 13.3 If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party's ability to pay).

14. We accept Mr Griffith's submission that the Claimant has acted unreasonably in: litigation not copying in important documents the Respondent was unreasonable and refusing to accept the preliminary hearing bundle from the Respondent. It was unreasonable of her not attending the Tribunal with specific documentation to support her application.

15. The Tribunal then considered whether to exercise our discretion to award costs costs and if so tribunal the amount.

16. The Claimant's conduct amounts to unreasonable conduct and the Tribunal exercise its discretion to award costs. In respect of the amount of costs the Tribunal does not award £600. The Tribunal orders the Claimant to pay £100 to the Respondent in respect of costs. The Tribunal has had regard to rule 84 the Tribunal rules, the Claimant's ability to pay and her income and have outgoings.

**Miscellaneous**

17. During the submissions the Claimant commented that she thought that she knew Tribunal Member Jansen. Enquiries were made about with Ms Jansen who has extensive HR experience over a number of years. She has no recollection of encountering the Claimant at all and there was no indication whether there was pre-knowledge to form the basis of potential conflict to affect the determination of the reconsideration or costs.

**Employment Judge Burgher  
Date: 27 October 2021**