Case No: 1301063/2019

EMPLOYMENT TRIBUNALS

Claimant: Ms J Collett

Respondent: Edge View Care Homes Limited

UPON APPLICATION by the Claimant made by an email dated 25 October 2021 seeking reconsideration of the judgment sent to the parties on 19 October 2021, under rule 71 of the Employment Tribunals Rules of Procedure 2013,

JUDGMENT

The Claimant's application for reconsideration is refused on the basis that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Background

1. This Claim was heard over 5 days from 11 to 15 October 2021 inclusive. Oral judgment and reasons were given on the final day of the Hearing, dismissing all of the Claimant's complaints. She had complained of failure to make reasonable adjustments, discrimination arising in consequence of disability and harassment.

2. The Claimant's application for reconsideration of the Judgment sent to the parties on 19 October 2021 was made on 25 October 2021. This was plainly within the 14-day time limit set by rule 71 of the Employment Tribunals Rules of Procedure 2013 ("the Rules"). The application was made prior to written reasons being provided, as these were only requested by the Claimant by email on 19 October 2021 and there had not been time to prepare them by the time the application for reconsideration was made. Reasons were sent to the parties on 21 November 2021. I did not consider the Claimant's application for reconsideration at all, other than to note that it had been received, prior to preparing the written reasons.

3. On 21 November 2021, as well as sending out the written reasons, the Tribunal sent a separate letter to the Claimant, copied to the Respondent, asking her to confirm in light of the written reasons whether she maintained her application for reconsideration, and if so whether the grounds of her application

remained those set out in her email of 25 October. By an email of 18 November 2021, she replied that she did maintain her application and on the same grounds, though she referred to this as her "appeal"; I return to this below. I have therefore now read her email of 25 October 2021 and have treated it as setting out her grounds for applying for reconsideration.

4. In her email of 18 November, the Claimant also referred to an email she sent to the Tribunal on 8 November 2021. The latter attached an email and letter of the same date sent to the Claimant by the Respondent's solicitors. In her email to the Tribunal of 18 November the Claimant summarises that letter as stating that if she pursues an appeal against the Tribunal's decision, the Respondent will "sue her for costs". The Claimant describes this as "blackmail" and asks for the Tribunal's views.

Appeals and reconsideration

5. It is important to note briefly the distinction between an appeal against an employment tribunal's decision and an application for reconsideration of it. An appeal must be made to the Employment Appeal Tribunal. It would not be helpful or appropriate for me to say anything beyond that, except to remind the Claimant of the information regarding appeals and how to institute them, which she should have received with the Tribunal's correspondence sending her the Judgment in this case. I am unable to provide any more guidance than that, whether in relation to appeals generally or in relation to the Respondent's solicitors' letter of 8 November. I will only add that the Claimant should previously have been provided with a leaflet setting out potential sources of advice for unrepresented parties. She may of course ask the Tribunal to provide a further copy. I am of course unable to provide advice.

6. I can say more about reconsideration applications. These are made to the Employment Tribunal and, as the Claimant seems to recognise, can lead to judgments being reconsidered, and in some cases as a result varied or revoked, where it is necessary in the interests of justice to do so – see rule 70 of the Rules. The phrase "interests of justice" is of course wide in its scope. Without restricting that scope, it is perhaps helpful to say that examples of when it might be in the interests of justice to reconsider a judgment include where new evidence has come to light since the hearing, where it becomes clear that the Tribunal made an error in the conduct of the case, or even in some circumstances where it is clear the Tribunal made some other error in reaching its decision. It will not ordinarily be in the interests of justice to reconsider a judgment where an application for reconsideration relies on seeking to re-argue points already considered by the Tribunal, or on evidence that was or could reasonably have been before the Tribunal at the hearing, unless of course the Tribunal considers on reviewing the points made in the application that an error has occurred.

7. Turning to the Claimant's application, in accordance with rule 72(1) of the Rules, the first step was for me to consider it in order to determine whether there is any reasonable prospect of the original decision being varied or revoked. In accordance with rule 72(1) of the Rules, this decision is mine alone. It would only have been had the application not been refused at this first stage that I would have consulted my colleagues, Mr Virdee and Mr Tsouvallaris. I should make

clear however, that of course the original Judgment to which the Claimant's application relates was a unanimous judgment of all three Tribunal members.

8. As rule 72(1) makes clear therefore, the first task is for me to decide whether there is any reasonable prospect of the original decision being varied or revoked. I have decided that there is not, for the reasons that now follow, taking matters essentially in the order adopted by the Claimant in her email of 25 October.

"List of lies by Margaret Marson"

9. This part of the Claimant's application seems principally to relate to her complaint of discrimination arising from disability as defined by section 15 of the Equality Act 2010, which concerned the events of 13 October 2018 when, in summary, Carol Harris changed the Claimant's planned work allocation for that day so that she became scheduled to work with a client who, on arrival at the Respondent's premises, indicated that he wanted to go into the local town. The Claimant's complaint, which we rejected, was that Ms Harris reallocated her in this way specifically in order to put her in a position where she could not walk because of her knee impairment. As the Claimant puts it in the reconsideration application, the allocation was "changed deliberately" by Carol Harris.

10. The complaint under section 15 failed first on the basis that the Respondent established that it did not know and could not reasonably have been expected to know that the Claimant was a disabled person as at 13 October 2018. There appears to be no challenge to that conclusion in the application for reconsideration except perhaps as briefly indicated below. On that basis alone, there is no prospect at all of our decision on the section 15 complaint being varied or revoked. I have nevertheless given careful consideration to the points the Claimant makes. It is not entirely clear which part of our decision the Claimant seeks to challenge in listing what she describes as Ms Marson's "lies" within the contribution Ms Marson made to the Respondent's investigation of the Claimant's grievance, but I deal with them briefly on their own merits and in turn.

11. The first thing to say is that I would be very hesitant indeed to conclude that someone who has not had opportunity to put their side of the story to the Tribunal, Ms Marson in this case, was telling lies. Ms Marson was not a witness in this case. In any event, I do not see any prospect at all of our decision being varied or revoked, based on the points the Claimant makes about Ms Marson's comments, for the reasons I will now give.

12. First, she refers to what Ms Marson said (at page 186 of the hearing bundle) about who was initially due to be responsible for medication on 13 October 2018, Ms Marson appearing to think (at the time of her interview for the grievance process at least) that it was the Claimant, when in fact the schedule for the day suggests it was originally Ms Marson herself and Ms Harris (page 273), with the Claimant (page 277) due to support two clients, one from 8.00 till 9.00 am and the other from 10.00 am to 1.00 pm. She also refers to what Ms Marson says about which staff were originally allocated to which clients.

13. I note from page 186 that Ms Marson expressed herself with some hesitation, not being entirely confident of her recollection and that in her oral evidence Ms Harris suggested Ms Marson was "possibly wrong" on this point. In any event, it is plain from our conclusions regarding the section 15 complaint, at paragraph 138

of our Reasons, that the Tribunal did not rely on what Ms Marson, or anyone else for that matter, said about who was due to be responsible for medication and who was eventually responsible for it, on the day in question. Equally, we did not rely for our conclusions on Ms Marson's views about which staff (including the Claimant) were originally scheduled to support which clients. In fact, we barely relied on what Ms Marson said at all, as paragraph 138 shows. Even had what she said in the grievance investigation been confused or inaccurate – or even, as the Claimant insists, untruthful – that would have been nothing like sufficient to change our conclusions as to the reasons why Ms Harris acted as she did. The matters on which we relied were set out in paragraph 138 of the Reasons, and nothing in the Claimant's application can properly be read as meaningfully challenging that assessment. There is no prospect whatsoever, let alone any reasonable prospect, of our decision in this regard being varied or revoked on the grounds the Claimant puts forward.

14. Secondly, the Claimant refers to two comments made regarding AC. The first, again at page 186, is Ms Marson's statement that she could not say whether anyone had a conversation about AC, whilst the second (page 187) relates to whether AC had a bus pass. I cannot see the relevance of the latter to the issues the Tribunal had to determine, or that it has anything to contribute to seeking a reconsideration, though I would not again that Ms Marson is recorded as having expressed herself with some hesitation – asking whether AC had a bus pass rather than confidently making a statement about it. As to the former, the Claimant appears to suggest that it supports her version of events regarding the alleged comment made to her by Carol Harris concerning AC. Paragraphs 59 and 60 of our Reasons set out the basis on which we concluded no such comment was made. We expressly took into account in reaching those conclusions the comment made by Ms Marson recorded at page 186. Again, even if Ms Marson's comment was confused, inaccurate or, as the Claimant would have it, untruthful, that would have been nothing like enough to overturn our conclusion based on the other evidence we took into account as assessed within those paragraphs.

15. Thirdly, there is Ms Marson's statement within the grievance investigation that the client with whom the Claimant worked on 10 October 2018 could "walk a fair bit" (again page 187). This can only relate to the complaint of failure to make reasonable adjustments. It should be noted that in this respect, the Claimant's application is based not on Ms Marson telling a lie but on her telling the truth. Paragraphs 49 to 55 of our Reasons set out our detailed findings as to what happened on 10 October. Indeed, we concluded that the Claimant had established that she had been put to a substantial disadvantage as a result of working with the client on that day. The Claimant's complaint failed on the question of the Respondent's knowledge of disability and knowledge of disadvantage. Ms Marson's comment cannot have been relevant to knowledge of disability. Paragraphs 134 to 135 of our Reasons, building in part also on paragraphs 124 to 133, set out in detail the evidence and factors that led to our decision on the question of knowledge of disadvantage. Whilst we did not expressly take Ms Marson's comment into account, it is plain that adding it into our deliberations on this point would not have weighed the balance in the Claimant's favour.

"Carol Harris, list of lies"

16. Again it is far from clear which aspects of our decision or reasoning the Claimant would have us reconsider by way of her comments under this heading,

though again I deal with what appears to be only one alleged lie, briefly on its merits.

17. Carol Harris' comment in her grievance investigation interview at page 177 about the Claimant's knees most obviously goes to the question of knowledge of disadvantage. We concluded the Respondent did not know and could not reasonably have been expected to know that she would be put at a substantial disadvantage in going out with the client on 10 October. Both in that regard, and if what the Claimant seeks to say is that this comment calls Ms Harris' credibility into question, I note that what Ms Harris said was, "I just allocated JC how I thought, then found out she was having difficulty with her knees". This reads more like she did not know the work allocation on that day would cause the Claimant any difficulty; it is far from clear that she was saying she did not know the Claimant had a knee problem at all, her evidence before us being that she did. Indeed, I put this comment to Ms Harris during her evidence and she agreed that she knew the Claimant had a knee issue, but had been told by the Claimant that the effect of the issue was different on different days.

18. I refer to paragraph 15 above on the issue of knowledge; this comment from Ms Harris was not material to our conclusions in that respect, and in any event can only have been supportive of our analysis that the Respondent did not know and could not reasonably have been expected to know that the Claimant would be put to any disadvantage by being allocated to the work she performed on 10 October. That is precisely what Ms Harris was saying. More generally, of itself it is far from sufficient to change our findings of fact on any crucial issue. Several witnesses, including the Claimant herself, could be said to have been not entirely consistent on certain points when one assesses what they said in contemporaneous documents and what they said in evidence before us. That is often the case.

Welfare meeting minutes

19. As to the welfare meeting minutes, the Claimant simply rehearses matters she put to us at the Hearing and again it is not clear how the Claimant says our reaching a different conclusion regarding the minutes would have led to a different decision in respect of the complaints we were asked to consider. It seems to me it can only be a credibility point, specifically related to Mr Smart who, with no disrespect to him, was the one Respondent witness who did not speak directly to the heart of the issues before us, which were set out at paragraphs 5 to 9 of our Reasons.

20. I note the following:

20.1. We expressly took into account Kate Lanfear's comment about the events of 10 October – see paragraphs 77 and 78 of our Reasons, and the last part of paragraph 134.

20.2. We expressly took into account the HR colleague's comment about a risk assessment – again see paragraphs 77 and 78.

20.3. It is far too late for the Claimant to say that she could have, or wished to, call other witnesses, namely Ms Lanfear and the HR colleague. At the very latest, that could have been raised with us at the Final Hearing. In any event, for the reasons noted at paragraph 19 above, it is difficult to see how their evidence, even if adverse to the Respondent, would have made any difference to the outcome of

the case, short of a complete collapse of all of the Respondent's remaining evidence in the light of what they might have had to say, which is implausible to say the least. We drew no adverse inferences from the Respondent's amendment of the minutes of the welfare meeting, for the reasons we set out.

The hearing itself

21. The Claimant concludes her application with a number of comments about the hearing itself.

22. We have acknowledged that the Claimant worked hard on her case – see paragraph 156 of our Reasons. Of course, as regrettable as it is for her, that cannot mean a party should be successful.

23. We expressly took into account the Claimant's concerns about "brain fog" – see paragraphs 12 and 13 of our Reasons. I remain satisfied that with the arrangements reflected in those paragraphs and, more broadly, am also satisfied that the Claimant had a fair hearing and a full opportunity to put her case, as it seemed she appeared to acknowledge during the hearing itself.

24. It is unclear to me why the Claimant thinks the Tribunal did not read her witness statements in full. We did. What I made repeatedly clear (see paragraph 10 of our Reasons) is that it was incumbent on the parties to take us to documents they wanted us to consider in deciding the issues set out above, as it would not have been possible to conclude the Hearing in anything like the allocated time if we had been required to read the whole bundle. That is the case in any hearing with anything other than a bundle of very small size.

25. The Respondent was well-represented by Mr. Weiss, but I am satisfied that we made ample allowances for the fact that the Claimant was unrepresented and not legally qualified – again see paragraphs 12 and 13.

26. The Claimant asks in closing her application that we read her statements and compare them to the bundle. It is not at all clear what that adds to the specific points considered above. That task was performed in conducting the Hearing and reaching our decision.

27. In summary, the Claimant's application seeks to re-argue points already fully addressed, argue points that she could properly have put before us at the Final Hearing, relies on evidence that could also have been put before us at that Hearing, or puts forward points that very obviously would have made no difference to the decision on these issues. The Claimant's application for reconsideration is therefore refused. There is no reasonable prospect of our decision being varied or revoked.

Employment Judge Faulkner
25 November 2021