



## EMPLOYMENT TRIBUNALS

**Claimant:** L Lloyd

**Respondent:** Elmhurst School Limited

# JUDGMENT

The Claimant's application dated 18 October 2021 for reconsideration of the Judgment delivered orally to the parties on 5 October 2021 is refused.

## REASONS

1. Rule 72(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the "Rules") enable an Employment Judge to refuse an application for reconsideration if they consider that there is no reasonable prospect of the original decision being varied or revoked. The test is whether it is necessary in the interests of justice to reconsider the judgment (Rule 70).
2. Preliminary consideration under Rule 72(1) must be conducted in accordance with the overriding objective which appears in Rule 2, namely that cases should be dealt with fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just process.
3. In *Ministry of Justice v Burton and anor* [2016] EWCA Civ 714 Elias LJ confirmed the importance of finality in litigation:

*"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on Tyne City Council v Marsden [2010] ICR 743, para. 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored.*

*In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Iron sides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

4. In *Liddington v 2Gether NHS Foundation Trust* EAT/0002/16 (paragraph 34) per Simler P (as she then was):

*"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, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited."*

5. The Claimant's application seeks to reargue facts already found and relitigate matters that have already been litigated. It is an attempt to have a second bite at the cherry. It is not in the interests of justice for the decision to be reconsidered. There is no reasonable prospect of the original decision being varied or revoked.
6. While these are not reconsideration points, the Tribunal also comments that:
  - a. The Claimant was offered the opportunity to provide written submissions, or not. The decision was for her.
  - b. The Claimant was also encouraged to present her oral closing submissions in whatever format suited her and she did so.

Employment Judge **L Burge**

Date: 23 October 2021

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