



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Nicholls

Respondent: Boogie Bounce Xtreme Limited

DECISION ON RECONSIDERATION APPLICATION

The claimant's application for reconsideration of the judgment sent to the parties on 24 August 2021 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. Rule 71 of the Employment Tribunals Rules of Procedure 2013 ("ET Rules") requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The written reasons were sent to the parties on 29 September 2021 (following a request from the claimant). The claimant submitted a request for reconsideration on 13 October 2021, so it has been made in time. The Tribunal sends its apologies to the claimant for the delay in dealing with her reconsideration application.
2. The grounds for reconsideration are set out in rule 72 (1) of the ET Rules: *"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. ..."*
3. The application for reconsideration appears to be made on the following grounds:
 - a) Documents in the Bundle which the claimant says supported her case were not mistakenly not drawn to the Tribunal's attention by the claimant. The claimant contends that various documents support her contentions that the *"motivation for her dismissal was a financial one"* and that the *"investigation was not a fair one procedurally flawed"*.
 - b) The claimant says that the Tribunal made incorrect findings of fact.

- c) The Tribunal was biased in its interpretations of comments it found were made.
 - d) The claimant wishes to assert new evidence by way of e mails/WhatsApp messages to support her position.
4. The hearing (held over 5 days for evidence and submissions, with an oral decision being delivered on day 6) was the claimant's opportunity to give information, ask questions and raise issues, which she did. She had the opportunity to advance all relevant arguments. The evidence was considered carefully, the legal tests applied, and the decision and reasons provided to the parties at the time. The allegations were fully explored. The Tribunal gave the issues full consideration and prepared its decision and reasons in detail. The claimant is, perhaps not surprisingly, unhappy with the outcome of the Tribunal as the decision was not in her favour.
5. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters; it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined. A reconsideration is potentially a route for a party to raise new matters, but only where these are of direct relevance and have subsequently come to light after the hearing and where that party can explain why the matter was not raised before.
6. I have read through the application for reconsideration in detail. The claimant makes very many points about the findings of fact, and why she says that they were incorrect or should have led to a different conclusion. However strongly the points are made, there is nothing in the application for reconsideration which indicates that it is in the interests of justice to re-open matters. The substance of the claimant's application is to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings. The application is an attempt to re-litigate what was explored in detail at the hearing. The claimant's application does not identify any new matters but largely makes points already raised at the hearing itself. It is noted that the claimant raises matters which she says support her contention that the motivation for her dismissal was a financial one and that the process followed by the respondent to dismiss her was unfair. To that end I do note that the claims before the Tribunal were ones of pregnancy and maternity discrimination (s18 Equality Act 2010 ("EQA")); harassment related to pregnancy and maternity (s26 EQA); unlawful detriment for reasons which relate to pregnancy, childbirth or maternity (s47C Employment Rights Act 1996 ("ERA")); automatically unfair dismissal for reasons of pregnancy, childbirth or maternity (s 99 ERA) and unlawful deduction from wages (s 13 ERA). In relation to the claimant's dismissal the issue the Tribunal had to determine was (broadly) whether the claimant was dismissed because of pregnancy or maternity. The claimant's complaint was not one of "ordinary" unfair dismissal under section 94 and 98 ERA. Therefore the points made by the claimant about a financial motive for dismissal or the fairness of the process are not directly relevant to the questions the Tribunal had to decide in any event. The documents in the Bundle that the claimant draws the Tribunal's attention to now and the messages appended do not appear either to have any direct relevance to the issues the Tribunal had to determine on this point namely whether the claimant was dismissed because of pregnancy or maternity.

7. It a fundamental requirement of litigation that there is certainty and finality. If conclusions are disputed on a point of law, i.e. it a party can identify flaws in the legal reasoning of the original decision, they are matters for an appeal, not a reconsideration.
8. There is no clear reason given as to why it would be in the interests of justice to reconsider. I have therefore exercised my discretion to refuse the application for reconsideration as there is no reasonable prospect of the judgment being varied or revoked. The claimant's application for a reconsideration is therefore rejected.

Employment Judge Flood

3 December 2021