Case No: 1800236/2021

EMPLOYMENT TRIBUNALS

Claimant: Miss Harris

Respondent: Hull University Teaching Hospitals NHS Trust

JUDGMENT

The claimant's application dated **24 November 2021** for reconsideration of the judgment sent to the parties on **11 November 2021** is refused.

REASONS

1. A Tribunal may reconsider its judgment where it is necessary in the interests of justice to do so. The claimant contends in her application that it would be in the interests of justice for my judgment which was sent to the parties on 11 November 2021 ("the Judgment") to be reconsidered because "cogent new facts and evidence have emerged since the hearing".

2. The claimant contends, in effect, that if such new facts and evidence were taken into account, I would vary or revoke the Judgment with the result that I would conclude that she had sufficient continuity of employment to pursue an "ordinary" unfair dismissal claim and so such claim should not be struck out. The Judgment of course struck out the claimant's ordinary unfair dismissal claim on the grounds that it had no reasonable prospect of success because the claimant had not completed two years' continuous employment when she was dismissed. My conclusions in relation to this issue were set out at [27] to [31] of the Judgment.

3. Rule 72 of the Tribunal's rules of procedure require me to refuse the claimant's application if I consider that there "is no reasonable prospect of the original decision being varied or revoked". I do consider that there are no such reasonable prospects, and therefore the claimant's application is refused, for the following reasons:

    3.1. The "cogent new facts and evidence" that the claimant contends have emerged since the date of the hearing on 20 October 2021 are no such thing at all. Rather appendices 6, 7A, 7B, 8 and 9 are all single page exerts concerning the NHS from the .gov.uk website. All would have been readily available prior to the hearing on 20 October 2021.

3.2. Further and separately, the claimant has included with her application at appendices 1 to 5 correspondence between herself and her previous representative, Steven Morris, of the Workers of England Union. That correspondence suggests that the claimant may have had problems in obtaining advice from Mr Morris in August 2021, which led to her writing to the Tribunal on 26 August 2021 requesting that “Stephen Morris be removed as my representative immediately”. It is not clear to me how this is relevant to the claimant’s application for a reconsideration, not least because the preliminary hearing did not take place until 20 October 2021. The claimant had more than adequate time to obtain alternative representation if she wished to do so. However, any problems in obtaining advice that the claimant may have encountered do not comprise “cogent new facts and evidence” or otherwise represent circumstances in which there is any reasonable prospect of success in an argument that the interests of justice require a reconsideration of the Judgment.

3.3. Further and separately, even if appendices 1 to 9 comprised “cogent new facts and evidence that have emerged since the date of the hearing” (and they do not), there would be no prospect whatsoever of them resulting in me concluding that the Judgment should be varied or revoked with the result that the claimant’s “ordinary” unfair dismissal claim was not struck out. Appendices 1 to 9 do no more than demonstrate that the NHS is often regarded as a single organization employing 1.3 million people and that it is referred to as a “single employer” in materials on the .gov.uk website. They do not address the technical issue of the calculation of continuity of employment in any way whatsoever. They do not advance the claimant’s case in any way beyond what I noted at [30] of the Judgment: “The claimant has not put forward any coherent legal basis for arguing that continuity was preserved – at the hearing she really fell back on having been “employed by the NHS for 13 years””.

3.4. Indeed, I am surprised that the claimant has sought a reconsideration on the basis that she has because I took some time to explain at the hearing on 20 October 2021 why the mere fact of employment by one NHS employer was insufficient for continuity of employment to be preserved when an employee moved to another NHS employer. For example, there was some discussion of how and why section 218(8) of the Employment Rights Act 1996 created an exception to the general rule that continuity of employment was not preserved between different NHS employers (and of course [28] of my judgment of 8 November 2021 refers to section 218(8)).

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Employment Judge Evans

Date: 21 December 2021