EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss Z Csatordai	AND	NHS West Sussex CCG

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD BY VIDEO (CVP) **ON** 10 December 2021

EMPLOYMENT JUDGE GRAY

Representation

For the Claimant: In person
For the Respondent: Ms Y Genn (Counsel)

RESERVED JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Claimant's application for reconsideration is dismissed.

REASONS

1. The Claimant applied for a reconsideration of the judgment dated 15 January 2021 which was sent to the parties on 18 January 2021.

2. The Claimant's reconsideration application is set out in an email dated 1 February 2021.

3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on

which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

4. By correspondence dated 6 March 2021 the Respondent was asked for its comments on the Claimant's application and both parties were asked for their views on whether the application can be determined without a hearing.

5. In response by email dated 17 March 2021 the Respondent provided its comments/submissions and confirmed that its view was the matter could be determined without a hearing.

6. The Claimant by correspondence dated 15 July 2021 (after reminders from the Tribunal) requested that the matter be determined by hearing by video.

7. Having regard to these responses by notice of hearing dated 29 July 2021 it was confirmed that the judgment made on 15 January 2021 and issued on 18 January 2021 would be reconsidered on 10 December 2021. It was given a time allocation of 3 Hours and it was confirmed that it would be heard by video (CVP) (to start at 10am). The parties were directed that they … "may submit written representations for consideration at the hearing. If so, they must be sent to the tribunal and to all other parties not less than 7 days before the hearing. You will have the chance to put forward oral arguments in any case.".

8. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

9. The Claimant sets out her grounds in her email dated 1 February 2021 (this was not copied to the Respondent at that time):

   "This is to request the review of the judgement sent on 18/01/2021, based on the following:

   - In response to the Respondent's refusal to comply with CMOs

   - In the face of not having received any meaningful response from the Respondent to date, in comparison with me who have complied as best as I could despite being in a substantially disadvantaged situation

   - In sanction of the Respondent's unreasonable, vexatious, and scandalously unacceptable, and inexcusable conduct re. breach of PID data re anonymity with a further victimising and harassing intent in retaliation, along the many others.

   - The ET not having assessed to the full list of medical reports issued since 15/01/2021."

10. Then by email dated 2 February 2021 the Claimant referred to an attached medical report from 20/01/2021 which was texted to her phone. The attachment to the email was not accessible by the Tribunal.

11. By correspondence dated 6 March 2021 the Claimant was reminded that she must copy the Respondent into her correspondence to the Tribunal unless it is an application for a witness order. The Claimant was informed that the Tribunal couldn't open the attachment of the medical report in her e-mail dated 2 February 2021 and requested that the Claimant resend it to the Tribunal and the Respondent, in a different format. It confirmed that the Claimant's email dated 1 February 2021 appeared to be making an application for reconsideration pursuant to Rule 71 of the Employment Tribunal Rules of Procedure. The Respondent was requested to provide its response to the application within 14 days.

12. By email dated 17 March 2021 the Respondent submitted:

"**Interests of justice**

A judgment can only be reconsidered where it is necessary in the interests of justice to do so (Rule 70). Reconsiderations are a limited exception to the general rule that there should be finality in litigation. They are not available as general means of enabling a disappointed litigant to have a second bite of the cherry (Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT).

In considering what is in the interests of justice, the Tribunal must consider "not only the interests of the party seeking the review or reconsideration, but also the interests of the other party to the litigation and the public interest requirement that there should, so far as possible, be finality of litigation" (HH Judge Eady QC in Outasight VB Ltd v Brown 2105 ICR D11, EAT).

Responding to each of the claimant's grounds for reconsideration, the respondent's case is as follows:

"The respondent's refusal to comply with CMOs"

The claimant has not put forward any basis for this assertion. There was no refusal to comply with CMOs by the respondent. The attached procedural chronology (which is an updated version of the one prepared for the preliminary hearing on 15th January 2021) makes clear the procedural history of this litigation which was characterised by repeated delays and failures by the claimant, as well as her non-attendance at three of the four preliminary hearings in this matter. We also enclose a copy of the bundle prepared for the hearing on 15th January 2021.

Despite the claimant never having made her allegations clear and never having engaged with the issues, the respondent disclosed its documents to her and was in a position to exchange witness statements on 30th November 2020 (the extended deadline sought by the claimant). The respondent did all it reasonably could to make preparations for the final hearing despite a lack of engagement by the claimant. The claimant was aware of the difficulties caused by these delays and, in an email to this firm dated 11th November 2020, she wrote: "thank you for your understanding, and I trust this does not cause any hold ups for you or the judiciary personally" (page 107 of the bundle).

It was not until 3.29am on 15th January 2021 (little more than one week before the final hearing was due to commence) that the claimant disclosed her documents. The index to the claimant's disclosure alone ran to 18 pages and the eleventh-hour service of such a voluminous amount of documentation would have derailed the final hearing if the claim had not been struck out. The respondent had been seeking disclosure from the claimant since 25th September 2020.

"No meaningful response from the respondent"

Again, there is no basis for this assertion. The procedural chronology and supporting bundle make clear that the respondent was responsive to the claimant throughout and proactive in seeking to prepare for the final hearing.

"The respondent's unreasonable, vexatious, and scandalously unacceptable, and inexcusable conduct re. breach of PID data re anonymity with a further victimising and harassing intent in retaliation"

Again, there is no basis for this assertion. The procedural chronology and supporting bundle make clear that the respondent was responsive to the claimant throughout and proactive in seeking to prepare for the final hearing. As noted above, the claimant thanked this firm for its "understanding" in her email of 11th November 2020.

The claimant may be conflating events in these proceedings with unconnected absence management processes being undertaken by the respondent (as the claimant's employer). We understand the "alleged breach of PID data" to refer to a letter sent to the claimant by the respondent (in its capacity as her employer) which appears to have become damaged in the post. This is entirely unrelated to the conduct of these proceedings and does not merit reconsideration of the decision taken on 15th January 2021.

"The ET not having assessed the full list of medical reports issued since 15/01/2021"

We have not had sight of any such reports and have been unable to open the attachment to the email sent to the Tribunal on 2nd February 2021. We understand from the Tribunal's letter of 2nd March 2021 that it has not been able to open it either.

The claimant did not assert at the time that she was unfit to participate in the hearing on 15th January 2021 and did not make an application to postpone it (albeit that she had sought reasonable adjustments to it). Despite not dialling into the hearing, she was emailing the Tribunal and this firm during the hearing itself with no explanation as to why she had not joined the hearing."

13. By email dated 15 July 2021 the Claimant confirms her position in respect of a hearing being requested by video. Attached to that email were:

    a. A letter dated 28 January 2021 from Dr Jessica Robinson about a 90-minute telephone consultation she had with the Claimant on the 20 January 2021.

    b. Written submissions in support of her application.

    c. A copy of a document dated 21 December 2020 with the heading … "Agenda items for ET PH 21 Dec 2020".

14. Then for this hearing the Respondent submitted:

    a. Written submissions (by email dated 3 December 2021 – albeit a copy had not made it to the Employment Judge by the start of this hearing, so a further copy was resent via the hearing clerk).

    b. An updated chronology and a further copy of the pdf bundle previously submitted (by email dated 8 December 2021).

    c. An electronic copy of the correspondence since the judgment (by email of 10 December 2021).

15. The Claimant submitted by way of a drop box link sent by email dated 8 December 2021 a zip file containing 6 sub files which included across them a total of 121 separate documents.

16. The hearing commenced with the parties shortly after 10am as the parties were having connection issues.

17. The hearing, its purpose and process was then explained to the parties.

18. The Claimant wanted to clarify orally the basis for her application referring to four matters (in summary):

    a. That she is not on an equal footing because she does not have legal representation.

    b. Medical evidence was not available at the time of the hearing, so it was not considered. This appears to be for the submission of new evidence to be considered in particular the report of Dr Robinson.

    c. That she feels continually harassed legally by the Respondent. She was not allowed to join her two cases. About this it was explained that the other case (1401324/2020) is against another NHS body.

    d. That she is trying to comply with the case management orders as best she can and does not feel that any case management orders have been made for her benefit.

19. The Claimant then explained that she also wanted to read out a written submission to make sure her application was received and understood. The Claimant confirmed that she had updated her drop box link this morning to include a copy of the submission she wanted to read from.

20. After review of the drop box link and it not being clear to which document the Claimant referred the Claimant agreed to email what she wanted to refer to. This was then emailed to the hearing clerk (and then forwarded to the Employment Judge – received at 10:52) and to Respondent's Counsel. The email attached her written submission (consisting of 13 pages) and three versions of a chronology detailing the claim process, one being a tracked changes version of the Respondent's chronology.

21. The Claimant then had connection issues and lost her connection entirely at just after 11am. Attempts were then made to reconnect her. This included the hearing clerk making three calls to the Claimant, but she did not take those calls or return them despite messages being left, and her connection was not restored by around 11:40. During this time the recently submitted written submissions were considered.

22. The Employment Judge expressed the view to Respondent's Counsel that the matter may need to be adjourned in view of the Claimant not reconnecting and so being able to confirm if she had further submissions.

23. Respondent's Counsel applied for judgment in the Claimant's absence asserting that further delay in view of the efforts made by the Tribunal to

allow the Claimant to participate was to the Respondent's prejudice, it would be putting it to further costs to address matters that were expected to be determined today. Respondent's Counsel then confirmed her submissions on the Claimant's application.

24. After considering the submissions made, and what was understood from the Claimant's application as clarified by her oral submissions at the start of this hearing, it was determined to dismiss the application for reconsideration on the basis that it was not in the interests of justice to do so.

25. The Claimant had not demonstrated with particular reference to the letter of Dr Robinson that she was medically unable to attend the hearing on the 15 January 2021, nor that the Respondent was at fault on the case management orders, nor that the Claimant had complied with them.

26. At that point the hearing clerk confirmed that she had now just heard from the Claimant who was trying to reconnect. The Claimant was then able to do so by telephone (so audio only) at 11:55.

27. The Claimant explained that she had tried a number of times to reconnect and had missed the calls from the hearing clerk.

28. What had happened in the Claimant's absence was then explained to her including the decision that had been reached. The Employment Judge confirmed that as she had now re-joined the hearing he would consider any further submissions the Claimant wanted to make, then allow the Respondent to respond to those and then review the matter, which owing to the listed hearing time, it was anticipated that a reserved judgment would need to be issued on the Claimant's application.

29. The Employment Judge directed the Claimant to focus on the judgment that she was applying for reconsideration of which found she was in breach of case management orders, was not actively pursuing the claim and a fair hearing was no longer possible. It was explained that she should explain and highlight the documents that support what appeared to be the two key aspects of her application, that she had complied with case management orders, contrary to the position as understood by the Employment Judge when making his decision on the 15 January 2021, and that she was medically unable to attend the hearing on the 15 January 2021.

30. The Claimant then made her oral submissions. During those the Claimant referred to her statement about disability sent on the 9 July 2020 and the 67 page document submitted on the 8 December 2021 (which did not appear to be a witness statement, instead being in the main, further particulars) to support that she had complied with the case management

orders. Respondent's Counsel submitted in her oral submissions that the Claimant had not evidenced compliance even by now.

31. The Claimant asserted that the letter dated 28 January 2021 from Dr Robinson supported that she was medically unfit on the 15 January 2021 by reference to the final paragraph. The Claimant also referred to the excel spread sheet of medical conditions that she had submitted to the Tribunal on the 9 July 2020. Respondent's Counsel in her oral submissions highlighted that the Claimant had not sought to dispute the findings made in the judgment of the 15 January 2021 at paragraph 17.

32. Respondent's Counsel in oral submissions asserted, in short, that the Claimant's conduct at this hearing was as the previous ones, with the last-minute submission of many documents, of which the majority are not relevant to the specific issues to be decided. She referred to the Claimant's "active inactivity". Further, that this way of conducting litigation was highly prejudicial to the Respondent and the public interest. Also, having considered the Claimant's 13-page submissions emailed during the course of the hearing, so far as she was able in the time when the Claimant was not present, Respondent's Counsel expressed that they do not raise matters in support of the Claimant's reconsideration application.

33. It was observed a number of times that, despite requests from the Employment Judge not to do so, the Claimant kept interrupting Respondent's Counsel when she was making her oral submissions, which was unhelpful. The Claimant did apologise for this at the end of the hearing.

34. The parties' submissions concluded shortly after 13:00, so it was confirmed judgment would be reserved.

The Law

35. Under Rule 70 of the Employment Tribunals Rules of Procedure, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' (Rule 2). This includes:

    a. ensuring that the parties are on an equal footing;

    b. dealing with cases in ways which are proportionate to the complexity and importance of the issues;

    c. avoiding unnecessary formality and seeking flexibility in the proceedings;

d. avoiding delay, so far as compatible with proper consideration of the issues; and

e. saving expense.

36. As to relevant case authorities concerning the grounds of reconsideration this was helpfully summarised in the written submissions of Respondent's Counsel (paragraphs 8 to 14 of her submissions) and is noted as follows:

a. The Employment Tribunal may take into account only whether it is in the interests of justice for the judgment to be reconsidered. However, the parameters within which 'the interests of justice' sit remain in keeping with the pre 2013 position. See ***Outasight VB Ltd v Brown*** UKEAT/0253/14 (21 November 2014, unreported). Mrs Justice Eady QC pointed out that the former specific grounds for review could be seen as particular instances when the interests of justice would generally have required such a review, and any consideration of an application under one of the specified grounds would have taken the interests of justice into account. In short, not only did the interests of justice ground in the 2013 Rules require the same approach to be taken as under the previous rules but the principles in the case law that had built up under the previous rules, including the specific grounds, were still relevant post-2013 (see paras 30, 46–48). Therefore, it is necessary to take into consideration whether (a) the decision was wrongly made as a result of an administrative error; (b) a party did not receive notice of the proceedings leading to the decision; (c) the decision was made in the absence of a party; and (d) new evidence had become available since the conclusion of the hearing which could not have been reasonably known of or foreseen at that time per the 2004 Rules.

b. It is accepted that 'the interests of justice' connotes a wide discretion, it is not without limit and must be approached with regard, not just to the interests of the party seeking the reconsideration, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation. See ***Flint v Eastern Electricity Board*** [1975] ICR 395 at 401 and 404, per Phillips J.

c. The importance of finality was emphasised by the Court of Appeal in ***Ministry of Justice v Burton*** [2016] EWCA Civ 714, [2016] ICR 1128, where Elias LJ, giving the only reasoned judgment, stated that the discretion to act in the interests of justice is not open-ended and emphasised the importance of finality, which he said militated against the discretion being exercised too readily (see para 21). Further, the principle that it will only be in the interests of justice to

allow fresh evidence to be introduced on review if the evidence was not available at the original hearing (para 25).

The Decision

37. As is submitted by Respondent's Counsel and which I accept, the Claimant does not address interests of justice particular to the judgment that she applies to be reconsidered. The original application together with the written submissions refer in essence to the hardships that she says she has experienced and that because of the disadvantage to her the Employment Tribunal must reconsider its judgment and set aside the decision to strike out to enable her claim to be determined. Her representations take no account of her failures to comply with tribunal orders nor the extent of delay that she imported into the substantive proceedings.

38. I accept (as also submitted by Respondent's Counsel) that the Claimant has been afforded many opportunities to comply with Employment Tribunal directions and orders and to attend hearings. She did neither and has not provided any or any reasonable explanation.

39. The judgment of the 15 January 2021 does review the preceding orders and the nature and conduct of previous hearings to assess what guidance had been provided to the Claimant to ensure that she had had every opportunity to comply. The judgment also weighed the impact of the Claimant's lack of compliance and engagement on the Respondent as can be seen at paragraph 26 of that judgment.

40. Having considered what was referred to and the submissions made at this hearing, the Claimant has not proven that she had complied with the breached case management orders relied upon in making the judgment dated 15 January 2021.

41. The Claimant has not demonstrated that she did or has now complied with the breached case management orders, nor that the Respondent was in non-compliance relevant to those orders the Claimant had to comply with.

42. The Claimant has not put forward reasons why it is now possible for a fair hearing to take place.

43. Having considered what was referred to and the submissions made at this hearing, the final paragraph of the letter dated 28 January 2021 from Dr Robinson does not support that the Claimant was medically unfit on the 15 January 2021. Further, the excel spread sheet of medical conditions submitted to the Tribunal on the 9 July 2020 does not address the issues as they stood on the 15 January 2021.

44. The Claimant asserts that she has many health concerns that impact on her mental health. What is not evidenced, despite the Claimant being given opportunity to identify and refer to a particular medical document or documents from those submitted by her for this hearing (some of which appear to be in Polish), is that her non-compliance of specific case management orders and her non-attendance on the 15 January 2021 was caused by her health concerns.

45. The Claimant did not assert before or on 15 January 2021 that she was not fit to participate in that hearing, neither did she make an application to postpone it. The Claimant was able to email the Tribunal and Respondent's solicitors throughout that hearing. The Claimant has not adequately explained why she did not join that hearing.

46. As already noted, the previous Tribunal Rules provided that a judgment could be reviewed on the ground that it 'was made in the absence of a party'. To succeed on this ground the applying party had to have a good reason for her absence from the hearing, such as illness or accident, or a genuine mistake about the hearing date. Considering then what is now the sole ground for a reconsideration under the current Tribunal Rules, that it is in the 'interests of justice', in relation to the non-attendance of a party. It is for the applying party to provide a good reason for her absence along with any supporting evidence, so that the tribunal can decide whether that reason is genuine. In addition, under rule 70, the party will also have to satisfy the tribunal that, owing to the reason for the original absence, it is necessary in the interests of justice for the tribunal's judgment to be reconsidered. As discussed above, 'the interests of justice' relates to the interests of justice to both parties. I would observe here that even if the Claimant had evidenced a genuine good reason for failing to attend the hearing, I do not consider (based on the matters already identified above) that it would be in the interests of justice to reconsider the decision made in the absence of the Claimant.

47. For all these reasons the Claimant's application for reconsideration is dismissed as it is not in the interests of justice to vary or revoke the judgment of the 15 January 2021.

Employment Judge Gray
Date: 13 December 2021

Judgment sent to Parties: 30 December 2021

For the Tribunal Office