



EMPLOYMENT TRIBUNALS

Claimant: Mrs F Yasar

Respondent: Park Cakes Limited

JUDGMENT

The claimant's application dated **12 October 2021** for reconsideration of the judgment sent to the parties on **16 August 2021** with written reasons sent to the parties on **28 September 2021** is refused. It has no reasonable prospects of success.

REASONS

1. By an email dated 12 October 2021 the claimant applied for reconsideration of the Tribunal's judgment which was given orally at the hearing on 12 August 2021 and sent to the parties in writing on 16 August 2021 ("the Judgment"). Written reasons were requested and they were sent to the parties on the 28 September 2021 ("the Reasons").
2. In the Judgment I dismissed the claimant's complaint of automatically unfair dismissal but upheld her claim of wrongful dismissal. I ordered that the respondent pay the claimant compensation of £250, representing the one week's notice to which the claimant was entitled.

Relevant Law

3. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013 ("the ET Rules")).
4. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties or within 14 days of the date that written reasons were sent (if later). It must be copied to the other party (rule 71 of the ET Rules).
5. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET

Rules). If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).

6. The “interests of justice” allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).
7. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

“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 by 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.”

8. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the “interests of justice”. That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:
 - that the evidence could not have been obtained with reasonable diligence for use at the original hearing
 - that the evidence is relevant and would probably have had an important influence on the hearing; and
 - that the evidence is apparently credible.
9. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

The claimant’s reconsideration application

Procedural points

10. The claimant’s application was made within 14 days of the parties being sent the Reasons. It was made in time. However, it does not appear to have been copied to the respondent as required by rule 71 of the ET Rules. At the rule 72(1) preliminary stage the Tribunal should not seek any response to the

application from the respondent (**TW White and Sons Ltd v White EAT 0022/21**). In those circumstances I consider it just to waive the requirement for the application to be copied to the respondent. I have directed that a copy of the application be sent to the respondent with this judgment.

The substance of the claimant's application

11. The claimant is represented by her friend, Mrs Asif. The application for reconsideration she has prepared on behalf of the claimant is not always clear and does not specifically set out why reconsideration would be in the interests of justice. The overriding objective to deal with cases justly and fairly in rule 2 of the ET Rules includes ensuring that the parties are on an equal footing (rule 2(a)). In fairness to Mrs Asif (who is not legally qualified and to the claimant, I have considered whether any of the points made in the application would justify the Tribunal reconsidering the Judgment even if it not specifically explained why that would be so.
12. First, the application disagrees with the conclusion in paragraph 48 of the Reasons about the reason why the claimant went to see Donna Condliffe. I found that was because she had a runny nose but also found that while COVID was in the back of her mind, she did not believe there was a "serious and imminent danger" (s.100(1)(e) of the Employment Rights Act 1996). The claimant disagrees with that finding. However, she has not put forward new evidence or argument which provide grounds for reconsideration.
13. Second, as I understand it, the claimant disagrees with the conclusion in the Reasons that even if s.100(1)(e) had applied, that was not the reason or principal reason for dismissal. The application for reconsideration refers to flaws in the investigation process by the respondent which I acknowledged in the Reasons and which I took into account in making my findings about the reason or dismissal at paragraphs 52-54. The claimant disagrees with my findings but does not set out new evidence or arguments not already made at the hearing to explain why it would be in the interests of justice to reconsider those findings. The claimant's reconsideration application does not provide grounds for reconsideration.
14. Third, the claimant makes an accusation of bias against me. That is not a matter which is suitable for consideration by the Judge who made the decision subject to the reconsideration application. The claimant will have to pursue that issue in any appeal against the Judgment.
15. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of the claimant's application for reconsideration leading to the original decision in the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Case No: 2413992/2020

Employment Judge McDonald
Date: 23 December 2021.

JUDGMENT SENT TO THE PARTIES ON
6 January 2022

FOR THE TRIBUNAL OFFICE