EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Ridley**

Respondent: **HB Kirtley t/a Queens Court Business Centre**

Heard at: **Newcastle CFCTC on the papers** **On:** **30 November 2021**

Before: **Employment Judge Arullendran**

JUDGMENT ON RECONSIDERATION

The Judgment of the Tribunal is that the application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The Claimant made an application on 13 October 2021 for the reconsideration of the Judgment dated 13 October 2021. The application was not copied by the Claimant to the Respondent at the time, but the Claimant was notified by the Tribunal on 21 October 2021 that she must copy all her correspondence to the Respondent. The Tribunal sent the written Reasons to the parties on 3 November 2021 and the Claimant was asked to confirm that she still wanted to proceed with her application for a reconsideration. The Claimant confirmed her wish to continue with this application in her email of 24 November 2021 and she confirmed in her email of 25 November 2021 that she would copy all of her correspondence to the Respondent. The Respondent has made no response in reply to the application for a reconsideration and I note that there is no requirement for any response from the Respondent at this stage of the process.

2. The Claimant's application consists of emails dated 13 October 2021, 15 October 2021, 24 November 2021 and 25 November 2021, with various attachments. The documents the Claimant has attached to her email of 15 October 2021 consist of 13 pages of double sided handwritten notes, which appear to have formed the basis of her instructions to her solicitor and her witness statement, and the attachment to the

Claimant's email of 24 November 2021 consists of a copy of an envelope with her name and a date on it.

3. The basis for the Claimant's application for a reconsideration can be summarised as her contention that she was not prepared for the hearing because her solicitor had not prepared the case sufficiently for her and she was ignorant of the process involved, that she was restricted in her questioning of the Respondent as it was confined to the issues agreed by the parties at the preliminary hearing on 14 April 2021 and she found it difficult to fit her evidence into those issues, particularly in respect of the pregnancy discrimination claim. The Claimant maintains in her application for a reconsideration that her job still exists with the Respondent and that she should have been retained on furlough rather than be made redundant, that the cleaning work still needs to be undertaken at the Respondent's premises, that she could be flexible and work daytime hours, that the alleged comment made about her not wanting to work with twins was made on 17 August 2020 rather than 25 August 2020 as stated in her witness statement, that the Respondent has taken on another employee at Queens Court, that there was no caretaker at Queens Court and that she was informed of her redundancy three days after she provided written confirmation of her pregnancy to the Respondent. The Claimant has also produced a copy of a request she made to the Respondent for a pay rise in 2013, which does not appear in the Tribunal bundle for the substantive hearing. However, I note, that all the other documents the Claimant is relying on in the application for a reconsideration (apart from her instructions to her solicitor and the envelope) are contained in the bundle, which was prepared by the Claimant's solicitor on her instructions, and were present at the hearing which took place on 11 and 12 October 2021.

4. I note that no new matters are raised in the application for a reconsideration and no new evidence is said to have come to light which had not been previously available to the Claimant. The envelope existed at the time of the hearing and the Claimant's handwritten notes also existed at the time of the hearing. Further, both of these items were in the control of the Claimant or her solicitor at the time of the hearing.

<u>The law</u>

5. Rule 70 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1, (the Employment Tribunal Rules) provides

   "The Tribunal may, either on own initiative (..) or on the application of a party, reconsider any judgement where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

6. Rule 72 of the Employment Tribunal Rules provides

   "(1) An Employment Judge shall consider any application 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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without hearing. The notice may set out the Judge's provisional view on the application."

7. Under the old rule 34 of the Tribunal Rules 2004, there were 5 grounds upon which the Tribunal could review judgement. These were:

    - that the decision was wrongly made as a result of an administrative error
    - the parties did not receive notice of the proceedings leading to the decision
    - that the decision was made in the absence of a party
    - that new evidence had become available since the conclusion of the Tribunal hearing to which the decision related, the existence of which could not have been reasonably known of or foreseen at the time (*my emphasis*)
    - that the interests of justice required a review

8. Under rule 70 of the Employment Tribunal Rules 2013, the Judgement will only be reconsidered where it is "necessary in the interests of justice to do so". This ground gives a Tribunal a wide discretion, but the case law that considered the same ground under the old review procedures suggests that it will be carefully applied. It does not mean that in every case where a litigant is unsuccessful, he or she is automatically entitled to a reconsideration as virtually every unsuccessful litigant thinks that the interests of justice requires the Judgement to be reconsidered. In fact, the ground only applies where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order: Fforde v Black EAT 68/80.

9. In dealing with an application for a reconsideration, the Tribunal must seek to give effect to the overriding objective to deal with cases "fairly and justly", as set out in rule 2 of the Employment Tribunal Rules 2013. This includes:

    - ensuring that the parties are on an equal footing
    - dealing with cases in a way which are proportionate to the complexity and importance of the issues
    - avoiding unnecessary formality and seeking flexibility in the proceedings
    - avoiding delay, so far as compatible with proper consideration of the issues; and
    - saving expense.

10. In the case of Outasight VB Ltd v Brown [2015] ICR D11, Her Honour Judge Eady QC accepted that the words "necessary in the interests of justice", as set out in rule 70, allows the Employment Tribunal a broad discretion to determine whether reconsideration of a Judgement is appropriate. However, the discretion must be exercised judicially, "which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to litigation and to the public interest requirement that they should, so far as possible, be finality in litigation".

11. I refer to the case of Redding v EMI Leisure Ltd EAT 262/81 in which the Claimant argued that it was in the interests of justice to review its Judgement because she had not understood the case against her and had failed to do justice when presenting her claim. The EAT observed that "*When you boil down what is said on [the Claimant's] behalf, it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation."* Accordingly, the appeal failed.

12. Reconsideration of a Judgement may be necessary in the interests of justice if there is new evidence that was not available to the Tribunal at the time it made its Judgement. I refer to the case of Ladd v Marshall [1954] 3 All ER 745 in which the Court of Appeal established that, in order to justify the consideration 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.

Conclusions

13. Applying the relevant law to the Claimant's application for a reconsideration, I find that none of the potential grounds for a reconsideration set out in paragraph 7, above, have been made out in her application. All the matters she complains of were aired in full at the full merits hearing and a reasoned decision has been made in respect of each matter in the Judgment dated 13 October 2021. Essentially, she is looking to relitigate the case because she does not agree with the findings of fact. Further, no arguments have been advanced by the Claimant to suggest that something had gone radically wrong with the procedure which led to a denial of natural justice. The only matter which might have constituted a procedural mishap is the Claimant's allegation that the incorrect date was attributed to the alleged discriminatory comment, however upon reading paragraph 25 of the Reasons, it is clear that the Tribunal found that the alleged comment was said to have been made on 17 August 2020 and that the Tribunal further went on to find that no such comment was ever made. In the circumstances, there was no procedural mishap as the correct date was considered by the Tribunal. It is the Claimant who has referred to the incorrect date in her application for a reconsideration.

14. The envelope alleged to contain the Claimant's letter of redundancy was clearly in the Claimant's possession at the time of the full merits hearing. Therefore, I find that the Claimant could have produced this document at the hearing with reasonable diligence, in accordance with the order for disclosure set out in the case management order dated 14 April 2021, and the Claimant had ample opportunity to ask questions

in cross examination of the Respondent about their intention to either post the redundancy letter to her or hand it to her at the final meeting, as set out at paragraphs 32 to 33 of the Reasons. Applying the guidance in Ladd v Marshall, above, I find that there is no reasonable prospect of the Judgement being revoked or varied in light of the Claimant producing this document now when it was clearly available to her at the time of the original hearing.

15. In essence, the Claimant did not do herself justice at the hearing on 11 and 12 October 2021 as she was not prepared for the presentation of the evidence and cross examination through her own inexperience and lack of knowledge. Applying the guidance of the Employment Appeal Tribunal in Redding v EMI Leisure Ltd, above, I find that this is insufficient to meet the threshold for the "interests of justice" ground and, therefore, the application reveals no reasonable prospect of the original decision being varied or revoked and falls to be dismissed.

16. Under the provisions of Rule 72(1), as set out above, the application is refused and there is no requirement for the Respondent to respond or provide its views on the Claimant's application.

17. Note: This has been a hearing on the papers which has not objected to by the parties. A face to face hearing was not held because it was not required under the provisions of Rule 72(1) of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1.

Employment Judge Arullendran

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
.....30 November 2021….....