EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112634/2015
Held in Glasgow on 13 June 2019 (Reconsideration Hearing in chambers)
Employment Judge C McManus
Tribunal Member D McAllister
Tribunal Member J S Kerr

Mr Zafar Hakim	**Claimant** **Written Representations** **by J Haria**
STUC	**Respondent** **Written Representations** **by R Stubbs -** **Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal, on its unanimous decision, is that the Judgment of this Tribunal dated 28 March 2019, also entered in the register and copied to parties on 28 March 2019, is reconsidered in terms of Rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 , and is confirmed without variation.

REASONS

Introduction

1 . On the application of the claimant's representative, this Tribunal reconsidered its Judgment following the Remedy Hearing in this case. The Judgment which is reconsidered is dated 28 March 2019, entered in the register and copied to parties on 28 March 2019. That Judgment was in respect of the claimant's remedy, following the decision of this Employment Tribunal dated 18 November 2016, entered in the register and copied to parties on 18**2** November 2016. That decision had been appealed to the Employment Appeal Tribunal ('EAT'), which appeal was dismissed in Judgment of the EAT (The Honourable Lady Wise) dated 10 August 2018 (Appeal No. EATS/0008/17/JW).

2. This reconsideration is made in terms of Rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 ('the ET Procedure Rules').

Issue

3. The Tribunal made its reconsideration of the Judgment dated 28 March 201 9, on the basis of the reconsideration application made by the claimant's representative and the respondent's representative's response to that. No new evidence was presented.

Initial Consideration of Reconsideration Application

4. On 10 April 2019, the claimant's representative applied for reconsideration of the Judgment dated 28 March 2019. That email from the claimant's representative of 10 April 2019, set out the claimant's position that it would be in the interests of justice " *.to review how the final compensation was arrived at to more adequately reflect the serious actions that the STUC has been found culpable of."* That email then set out more detail of the claimant's position on that, under headings of: victimisation; Polkey deduction; mitigation; pension loss; period of loss; deduction for contributory action; injury to feelings and because multiple deductions had been made for mitigation, *Polkey,* contributory conduct and period of loss.

5. That reconsideration application was referred to EJ McManus for her initial consideration. It had been submitted in time, within 14 days of the date that the Judgment was sent to parties on 28 March 2019, and the application set out why reconsideration was considered to be necessary in the interests of justice. The application had been copied to the respondent's solicitor. The application complied with Rule 71 of the ET Procedure Rules. EJ McManus did not refuse the application at Initial Consideration, under Rule 72. Parties were notified of a period of 21 days for any response to the reconsideration application and for both parties to express their views on whether the application could be considered without a Hearing. A provisional view was expressed that the reconsideration could be dealt with by way of consideration of written submissions, without a Hearing. That notification was sent to both parties on 25 April 2019, seeking a reply by 1 6 May 2019.

6. By email to the Tribunal, and copied to the claimant's representative, on 9 May 201 9, the respondent's representatives notified their agreement to the reconsideration being dealt with without a hearing and provided written submissions, being the respondent's response to the reconsideration request by the claimant. By email to the Tribunal, and copied to the respondent's representative, on 15 May 2019, the claimant's representative confirmed his agreement that the reconsideration be dealt with without a hearing. The claimant's representative provided his written submissions on 24 May 201 9. On 31 May 2019 the respondent's representatives confirmed that they had no further comment to make on those written submissions.

7. The Reconsideration Hearing was scheduled to take place in the Glasgow Employment Tribunal offices on 1 3 June 201 9, with that reconsideration being by way of this Tribunal's consideration of parties' representatives' written submissions only. Parties' representatives were not in attendance.

8. The Tribunal was satisfied that it was in line with the overriding objective set

out in Rule 2 of the ET Procedure Rules for this matter to be dealt with by way of written submissions.

Relevant Law

9. The reconsideration is dealt with in terms of Rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1. As this was an application by the claimant, Rule 73, relating to reconsiderations by the Tribunal on its own initiative, does not fall to be considered further. In terms of Rule 70, at this Reconsideration Hearing, the Judgment might be confirmed, varied or revoked. The Tribunal's overriding objective, under Rule 2, to deal with the case fairly and justly, applies.

1 0. The previous Employment Tribunal Rules 2004 provided a number of grounds on which a judgment could be reviewed (now called a reconsideration). The only ground for reconsideration in the Employment Tribunal Rules of Procedure 2013 Rules is set out in Rule 70 and is *'where it is necessary in the interests of justice"* to do so. That means justice to both sides. That phrase is not defined in the Employment Tribunals Rules of Procedure 2013, but it is generally accepted that it encompasses the five separate grounds upon which a Tribunal could *"review"* a Judgment under the former 2004 Rules.

1 1 . Reconsideration of a Judgment is one of the two possible ways that a party can challenge an Employment Tribunal's Judgment. The other way is by appeal to the Employment Appeal Tribunal. The Judgment of this Tribunal following the Merits Hearing in this case was appealed to the EAT by the respondent. The claimant has lodged an appeal to the EAT in respect of this Tribunal's Judgment of 28 March 2018, which is understood by this Tribunal to be outstanding.

1 2. Although there are some differences between the current Rules 70 to 73 and the former Rules 33 to 36, it was confirmed by HHJ Eady QC in *Outasight VB Limited v Brown* [201 5] ICR D1 1 , that the guidance given by the Employment Appeal Tribunal in respect the 2004 Rules of Procedure is still relevant guidance in respect of the 2013 Rules. HH Judge Eady QC said: -

"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3) (d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3) (e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules".

13. Her Honour Judge Eady QC, provided further judicial guidance on reconsiderations in *Scranage v Rochdale Metropolitan Borough Council*

[201 8] UKEAT/0032/17. At paragraph 22, when considering the relevant legal principles, she stated as follows: -
"The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that 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 the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation. "

14. In *Dundee City Council v Malcolm [20 16] UKEATS/00 19-2 1/15,* the then EAT President, Mr Justice Langstaff stated, at paragraph 20, that the current Rules effected no change of substance to the previous Rules, and that they do not permit a claimant to have a second bite of the cherry, and the broader interests of justice, in particular an interest in the finality of litigation, remained just as important after the change as it had been before.

1 5. The Court of Appeal in *Ministry of Justice v Burton & Another* [201 6] EWCA Civ.714, also reported at [2016] ICR 1128, referred to HH Judge Eady's comments. At paragraph 25, Lord Justice Elias, refers, without demur, to *"the principles recently affirmed by HH Judge Eady in the EAT in Outasight VB Ltd v Brown UKEAT/0253/14."* Further, at paragraph 21 in *Burton,* Lord Justice Elias stated
"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on Tyne City Council v Marsden [2010] ICR 743, para. 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily.
1 6. Mr Justice Underhill commented on the introduction of the overriding objective (now found in Rule 2 of the 2013 Rules) and the necessity to review previous decisions, and on the subject of a review, in providing guidance to Tribunals *in Newcastle upon Tyne City Council - v- Marsden [2010] ICR 743,* as follows: -
"But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in Jurkowska v Hlmad Ltd. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic" "... that dealing with cases justly requires that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made.
The principles that underlie such decisions as Flint and Lindsay remain valid, and although those cases should not be regarded as establishing propositions of law giving a conclusive answer in every apparently similar case, they are valuable as drawing attention to those underlying principles. In particular, the weight attached in

many of the previous cases to the importance of finality in litigation - or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry - seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal").

1 7. The approach to be taken to applications for reconsideration was considered by Mrs Justice Simler, then President of the EAT, in *Liddington v 2Gether NHS Foundation Trust [2016] UKEAT/0002/16/DA.* That relates to the stage of initial consideration, but the comments of Mrs Justice Simler at paragraph 34 and 35 of her Judgment are relevant to the present case. These are as follows:

"34.In his Reconsideration Judgment the Judge identified the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage. In this case, the Judge addressed each ground in turn. He considered whether there was anything in each of the particular grounds relied on that might lead him to vary or revoke his decision. For the reasons he gave, he concluded that there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, 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 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. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

35. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly. '

18. There is a public policy principle that there must be finality in litigation and reviews or reconsiderations are a limited exception to that principle. In *Stephenson v Golden Wonder Limited [1977] IRLR 474* it was made clear that

a review (now a reconsideration) is not a method by which a disappointed litigant gets a *"second bite of the cherry'.* Lord Macdonald, the Scottish EAT Judge, said that the review provisions were *"not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence produced which was available before".*

1 9. In *Fforde v Black EAT68/80,* the EAT set out that this ground does not mean *"that in every case where a litigant is unsuccessful he is automatically entitled to have the Tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order. "*

20. The interests of justice in reconsideration, means the interests of justice to both sides. The Employment Appeal Tribunal provided further guidance in *Reading v EMI Leisure Limited EAT262/81,* where it was stated *"when you boil down what it 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. "*

21 . Following *Lindsay v Ironsides Ray and Vials 1994 ICR 364, EAT,* the failings of a party's representative, professional or otherwise, will not usually constitute a ground for review. There are exceptions to that norm, e.g. *Newcastle upon Tyne City Council v Marsden.*

22. Following *Neary v Governing Body of St Albans Girls' School and another 2010 ICR 473 CA,* in an application for review, all relevant all relevant facts and circumstances should be taken into account.

23. In *Yorkshire Engineering and Welding Co Ltd v Burnham 1974 ICR 77 NIRC,* it was held that 'the *tribunal's errors fell well within the range of error inherent in any form of forecasting' .* The test for a Tribunal is considering applications for review of remedies decisions in which the compensation awarded includes an element of future loss was set out as follows: -
"That the test for an industrial tribunal to decide whether or not to review a decision was whether the forecasts that were the basis for the decision have been falsified to a sufficiently substantial extent to invalidate the Tribunal's assessment, and whether that falsification occurred so soon after the decision that a review is necessary in the interests of justice; but that in the present case since the facts were not in the event substantially different from what was forecast the tribunal had rightly refused a review of their decision. "

Claimant's Application for Reconsideration

24. The claimant's representative's position is that it is in the interests of justice for the Tribunal to reconsider its Judgment dated 28 March 2019, for the reasons set out in the claimant's representative's email of 10 April 2019 and in his written submissions presented on 24 May 2019. It was submitted that

it 'would be in the interests of justice to review how the final compensation was arrived at to more adequately reflect the serious actions that the STLIC has been found culpable of'.

25. The full terms of the claimant's representative's written position on the reconsideration have been considered by the Tribunal. In his conclusion, it was submitted that 'it would be just and equitable for the Tribunal to reconsider their judgment in this case." The claimant's representative's position in his written submissions is summarised as follows:-

26. Victimisation: -
It was submitted that victimisation is not 'really featured' in the Judgment and that this is a serious omission and it would be in the interests of justice for the Tribunal to revisit its thinking on this and to reconsider the deductions applied.

27. *Polkey* deduction: -
It was submitted that the applied 70% *Polkey* deduction is excessive and that it would be in the interests of justice for the Tribunal to Te-look at this amount'. Further submissions were made on evidence in respect of this.

28. Mitigation:-
It was submitted that the burden of proof is on the respondent in respect of mitigation and that and that it would be in the interests of justice for the Tribunal to 're-consider their position on this'. Some reference was made to the Tribunal's findings in fact. It was submitted that 'as clearly the respondents have failed to discharge the burden of proof on this, it is harsh for the Tribunal to apply a 30% reduction on the amount awarded.' Reliance was placed on there being no mention in the Judgment of '..the fact that black / minority ethnic people find it harder to secure employment in Scotland (with some of this down to discrimination and victimisation).'

29. Pension Loss:-
It was submitted that the Tribunal's recognition that 'there is a relatively small likelihood of the claimant enjoying a similar (final salary pension) scheme in any employment he secures in the future' is conflicting to its statement that 'it was considered to be just and equitable to calculate pension loss with regard to the same period in respect of which wage loss was calculated.'

30. Period of Loss:-
Submissions were made that it was not just and equitable to treat what in fact turned out to be a temporary employment as setting a limit to the assessment of loss. The Tribunal was asked to reconsider its decision on that. Reference was made to *Cowen v Rentokil Initial Facility Services (UK) Ltd t/a Initial Transport Services* UKEAT/ 0473/07, that "/t *is at least necessary for the Tribunal to have regard to the circumstances under which that job was lost".* The Tribunal was asked to reconsider its decision on this. It was submitted in respect of the medical evidence ".. .whilst it is a fact that the first medical record of the claimant's stress *I* anxiety is made sometime after the claimant's dismissal, the condition is not one where symptoms appear on day one, nor one where medical advice is sought on day one; rather it manifests itself over a period of time, but the original cause of stress for the claimant was clearly his dismissal by the respondents"

31 . Deduction for Contributory Action:-
The Tribunal was 'asked to revisit its ruling on this'. It was submitted that any deficiency in the application for funding, which was denied, "has no bearing on the subsequent unfair dismissal or victimisation actions". It was submitted that "...the ending of the post does not necessarily mean dismissal of the post-holder."

32. Injury to Feelings:-
It was submitted that a reconsideration of the award in respect of injury to feelings (£3,800), which was lower than the respondent's submission on the appropriate level of that award (£5,000), would "...be appropriate, especially as it was victimisation that led to multiple failures in the respondent's actions..".

33. Multiple Deductions for Mitigation, *Polkey,* Contributory Conduct, Period of Loss:-
Reference was made to *O'Donoghue v Redcar and Cleveland Borough Council* [2001] EWCA Civ 70; [2001] IRLR 61 5, CA. It was submitted that the Tribunal should not limit the period of compensation and apply a percentage reduction to the compensation during that period. It was submitted that " in the wider interests of justice, it would be appropriate for the Tribunal to reconsider all aspects of the many and multiple deductions that have been made in this case."

Respondent's Response

34. The full terms of the respondent's representative's written submissions have been considered by the Tribunal. The respondent's representative's written submissions are summarised in those written submissions themselves as follows
(a) A reconsideration application is not and should not be allowed to be an opportunity to repeat submissions already made / raise submissions which could have been made;
(b) The ET will need to be cautious that C's submissions reflect the evidence before it. C cannot now seek to change his evidence / the evidence before the ET through a reconsideration request (e.g. the evidence on the Woman and Work position - C's evidence was that he decided not to take this post; and the SAMH position - the medical evidence showed that stress arose only following C's first jobs which he resigned from (p165));
(c) It is not in the interests of justice to allow the parties to 'have another go' if they do not like the outcome of a hearing. R's submission was that a 100% Polkey deduction should have applied given C's evidence. The ET found against that submission. R does not consider it appropriate or possible to seek a reconsideration of the ET's findings. C seeks to have another go through this application."

35. The respondent's representative referred to Rule 70 and the Court of Appeal's decision in *Ministry of Justice v Burton* 2016 ICR 1128. Further comment was provided in the respondent's representative's written submissions. In essence, it was the respondent's representative's position that the points made in the reconsideration application have been dealt with in the Judgment dated 28 March 2019, are based on the evidence before the Tribunal, and are not appropriate to be dealt with in reconsideration.

Decision

36. There is no dispute that the Judgment of this Tribunal dated 28 March 2019 is a Judgment as defined in Rule 1 (3) (b) of the Employment Tribunals Rules of Procedure 2013. It finally disposed of the claimant's claim against the respondent, by setting out the remedy following the claimant's successful claims of unfair dismissal and victimisation in the Judgment of this Tribunal dated 18 November 2016.

37. The claimant's representative's application for reconsideration was not refused on initial consideration. On the basis of the terms of the claimant's representative email of 10 April, EJ McManus considered that it was not in line with the overriding objective in terms of Rule 2 to refuse the application without reconsideration by the full Tribunal who made the decision dated 28 March 2019 on the points made by the claimant's representative. EJ McManus did not consider that there was no reasonable prospect, following consideration by this full Tribunal, of the Judgment dated 28 March 2019 being varied or revoked. For that reason, the reconsideration application was not refused on initial consideration.

38. The issue for this Tribunal on this reconsideration of the Judgment dated 28 March 2019, is to consider on the basis of the reconsideration application made by the claimant's representative and the respondent's representative's response to that.

39. In this reconsideration, this Tribunal has now carefully considered both parties' written submissions, and its obligations under Rule 2 of the Employment Tribunal Rules of Procedure 2013, being the Tribunal's overriding objective to deal with the case fairly and justly. Both parties have been given a reasonable opportunity, in advance of this Reconsideration Hearing in chambers, to make their own written representations respectively seeking and opposing the claimant's application for reconsideration of the Judgment dated 28 March 2019.

40. There is nothing in the claimant's submissions that establishes or suggests that something has gone wrong at or in connection with the Judgment dated 28 March 2019, nor that something has happened since the Remedy Hearing in this case which makes the Judgment of 28 March 2019 unjust. No new evidence has been presented. It has not been argued that any significant event has occurred affecting the position set out in the Judgment dated 28 March which was not or could not have been known as at the dates of the Remedy Hearing.

41 . There is no suggestion of any alleged failure in the representation provided to the claimant in this case. The claimant's representative at this reconsideration hearing is the same individual as was his representative at both the merits hearing and the remedy hearing.

42. This Tribunal agrees with the position set out in respondent's representative's written submissions that the points raised by the claimant's representative in this reconsideration application are dealt with in this Tribunal's Judgment dated 28 March 2018. Some of the points made in the reconsideration argument may be points for appeal before the EAT.

43. This Tribunal made its findings in fact on the evidence before it, taking into

account the credibility and reliability of the witness. The Tribunal applied the relevant law to its findings in fact and made its decision on remedy, all as set out in the Judgment dated 28 March 2019.

44. This Tribunal comments on each of the basis on which the reconsideration application is made below. It is recognised that the basis for reconsideration is in the interests of justice, and not 'just and equitable', as referred to in the conclusion of the claimant's representative's submissions.

45. Victimisation: -
The decision on the victimisation claim is set out in this Tribunal's decision dated 18 November 2017. That victimisation claim was successful, for the reasons set out in the decision dated 18 November 2017. The total award set out in the Judgment dated 28 March 2019 included a compensatory award and an injury to feelings *(solatium)* award. Had this Tribunal not dealt with remedy in respect of the successful victimisation claim, no award would have been made in respect of injury to feelings *(solatium)* and no recommendation would have been made. On the principle of there being no double recovery, and in accordance with he Employment Rights Act 1996 Section 126, the compensatory award can be made only in respect of one head of claim. In addition to what was considered to be a just and equitable compensatory award in respect of financial losses, the compensatory award includes an element in respect of injury to feelings *(solatium),* which is only in respect of the successful victimisation claim. For the reasons set out in the Judgment of 28 March 2019, the compensatory award is just and equitable. Remedy is made in line with section 124 Equality Act 2010. The compensatory award should not have a punitive element. The claimant's actual financial loss is relevant, subject to deductions as considered to be just and equitable. The cap does not apply because of the level of the compensatory award made. Had the cap to unfair dismissal awards applied, the Tribunal would have specified that the award was made in terms o the victimisation claim, so as to allow compensation in excess of the cap on unfair dismissal awards.

46. Polkey Deduction
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, deductions were made to the compensatory award at the level which was considered by this Tribunal to be just and equitable, based on its findings in fact and the relevant law.

47. Pension Loss:-
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, the compensatory award included such pension loss as considered by this Tribunal to be just and equitable on the findings in fact and on the application of the relevant law. In its Judgment dated 28 March 201 9, this Tribunal took into account the position as set out in the 'Comments on Evidence section', particularly, in respect of pension loss, at paragraph 20 and reached its conclusion as set out at paragraph 27.

48. Mitigation:-
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, deductions were made to the compensatory award at the level which was considered by this Tribunal to be just and equitable, based on its findings in fact and the relevant law. Findings in fact relevant to mitigation are set

out in the Judgment dated 28 March 201 9, particularly at paragraphs 6(a); (b); (d); (g); (h); (i) and (j) and commented on at paragraphs 16, 17 and 20.

49. Period of Loss:-
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, the compensatory award was calculated with regard to the period of loss as considered to be just and equitable, on the findings in fact and on the application of the relevant law. The Tribunal had regard to the circumstances under which the claimant's employment at SAMH was lost, as set out in the findings in fact at paragraph 6(i) and commented on at paragraph 20. Medical evidence which was before the Tribunal was taken into account and the parties had the opportunity at the Remedy Hearing to make submissions on that.

48. Deduction for Contributory Action :-
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, particularly at paragraphs 28, deductions were applied as considered to be just and equitable on the findings in fact and on the application of the relevant law. There is no evidence relied upon by the claimant's representative in the reconsideration application which was not or could not have been before this Tribunal. In its Judgment dated 28 March 20019, this Tribunal made findings in fact relevant to its conclusions in respect of contributory action, as set out in the findings in fact, particularly at paragraphs 6 (a) and (g) and commented on at paragraph 20. Medical evidence which was before the Tribunal was taken into account and the parties had the opportunity at the Remedy Hearing to make submissions on that. As set out in the Judgment of this Tribunal dated 28 March 201 9, the applied deduction of 30% takes into account that "...the ending of the post does not necessarily mean dismissal of the post- holder."

50. Injury to Feelings:-
There is no suggestion that the award for compensation for injury to feelings caused by victimisation is manifestly low or wrong in principle. For the reasons set out in this Tribunal's Judgment dated 28 March 2019, the injury to feeling *(solatium)* award was made at the level set out in that Judgment, as considered by this Tribunal to be appropriate on the findings in fact (made on the evidence before it) and on the application of the relevant law.

51 . Multiple Deductions for Mitigation, *Polkey,* Contributory Conduct, Period of Loss:-
For the reasons set out in this Tribunal's Judgment dated 28 March 2019, the compensatory award calculated as considered to be just and equitable on the findings in fact and on the application of the relevant law.

52. After careful consideration of the competing arguments, taking into account the relevant law, as ascertained in the legal authorities referred to above, the Tribunal is satisfied that, on reconsideration, it is appropriate to confirm the Judgment dated 28 March 2019, without variation. The Tribunal is satisfied that the legal arguments submitted by the respondent are well-founded, and must prevail over the claimant's contrary submissions. Following the line of authorities as set out above, the claimant's reconsideration application seeks to have 'a second bite of the cherry'. The circumstances in this case are similar to those recognised by Mrs Justice Simler, then President of the EAT,

in *Liddington v2GetherNHS Foundation Trust [2016] UKEAT/0002/16/DA,* in her comments:-
"Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. "
53. With regard to the comments from the EAT in *Reading v EMI Leisure Limited EAT262/61,* as set out above, in the present case, it is not said, and, as we see it, cannot be said that any conduct of the case by the respondent here caused the claimant or his representative not to do the claimant justice.

54. It is noted that at paragraph 52 of this Tribunal's Judgment dated 18 November 2017, issued following the Merits Hearing in this case, indication was given to parties that at the Remedy Hearing there would require to be consideration of the extent of any deductions. This Tribunal made its considerations, based on its findings in fact and on the application the relevant law, as set out in its Judgments in this case dated 1 8 November 201 6 and 28 March 2019.

55. The phrase '/n *the interests of justice'* means in the interests of both parties. The respondent is entitled to finality of the litigation in the Judgment (subject to appeal).

56. Having considered parties' respective written representations on the claimant's opposed application for reconsideration of the Judgment dated 28 March 2019, setting out the claimant's remedy following the decision of this Employment Tribunal dated 18 November 2016, the Tribunal, in terms of Rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, having reconsidered that Judgment, in light of the claimant's application dated 10 April 2019, the claimant's representative's submissions of 24 May 201 9 and the respondent's representative's submissions dated 9 May 2019, confirms the Judgment dated 28 March 2018, without variation.

Employment Judge: C McManus
Date of Judgment: 26 June 2019
Entered in register: 27 June 2019
and copied to parties