



EMPLOYMENT TRIBUNALS

Claimant: Ms J Nicholls

Respondent: (1) The Girls' Day School Trust
(2) Mr A Gray

RECONSIDERATION JUDGMENT

1. The application for reconsideration has no reasonable prospect of success and is refused.

REASONS

1. By an undated application attached to an email dated 2 February 2022 the Claimant applied for reconsideration.
2. The application has no reasonable prospect of success for the following reasons which adopt the headings in the application.

Characterisation of the Claimant

3. The tribunal took a balanced view of the Claimant taking into account the vast amount of evidence it heard. It took into account essentially the factors identified in the application for reconsideration among very many others in reaching its findings of fact.

Restoration of trust

4. Paragraph 161 appears to have been misunderstood. What it does is state some important findings of fact about the view the *First Respondent* took of its relationship with the Claimant. It is not an endorsement of what the First Respondent had done previously or did subsequently.
5. The tribunal is not critical of the Claimant for instructing employment lawyers and indeed it expressly said it was not critical of her for doing that (paragraph 154). It meant what it said.
6. Mr Boyd's characterisation of the proposed mediation meeting does not read at all like an invitation to a disciplinary hearing. It does however identify the primary topic of

ongoing, severe friction between the parties that needed to be addressed to avoid further problems going forwards. The Claimant chose not to attend.

7. It is correct that Ms Longstaff was not an independent person in her role as chair of the disciplinary proceedings. The tribunal's judgment makes that plain and is a factor that has been taken fully into account already.

Safeguarding

8. It was the First Respondent's duty as both an education provider and as an employer to take a view on the seriousness of the matters that led to the Claimant's summary dismissal and to take action accordingly.
9. It was the tribunal's duty to assess whether the action the First Respondent took was (1) for a potentially fair reason, (2) in/out of the band of reasonable responses for the purposes of s.98(4) Employment Rights Act 1996 and (3) lawful/unlawful under the Equality Act 2010. The tribunal fulfilled its duty.
10. In any event, the letter dealing with the outcome of the TRA proceedings that was before the tribunal did not express any view on the matters that led to the summary dismissal (as distinct from the matters relevant to the dismissal on notice). In that regard, there was nothing for the tribunal to defer to even if deference was required (which it was not).

11 October 2019 Dismissal

11. The arguments here largely repeat the Claimant's mitigation. The tribunal was at pains to acknowledge, and took into account, the Claimant's mitigation when assessing the fairness of her summary dismissal.
12. As regards the sheet music, the First Respondent's view at the time of the disciplinary proceedings (which is a view that was not only open to it but also was, per the tribunal's reasons, factually correct) was that the Claimant had taken the sheet music in order to sabotage the open day. Whether Mr Meryon ought to have known that the music was available on the girls' ipads and/or whether it could be retrieved by going to the Claimant's house and demanding it, is very far from the point.
13. In any event, there was no evidence before the tribunal that the music was on the girls' ipads nor is it any answer to say that someone could have gone to the Claimant's house and demanded the sheet music back.

Sex discrimination

14. The tribunal gave extremely careful thought to the complaints of sex discrimination. Having heard all of the evidence it made exhaustive primary findings of fact. Having done that, it stood back, considered the evidence as a whole and carefully considered what inferences of discrimination if any to draw. In doing so it considered essentially the arguments the Claimant makes in her reconsideration application. For the reasons it gave the tribunal dismissed the complaints of sex discrimination.

Employment Judge Dyal

Date 11.02.2022