



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Charmaine Smith

v (1) Wellspring Care Services Limited
(2) Caerus Life Care Services Limited

JUDGMENT on RECONSIDERATION APPLICATION

The Claimant's application dated 29 December 2021 for reconsideration of the Judgment sent to the parties on 13 December 2021, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later). Having regard to the provisions of Rule 4, the Claimant's application has been made in time.
2. The starting point clearly has to be the decision the Tribunal reached following the hearing and Chambers' discussion in October and November last year. We have re-read the Judgment. We consider that we set out in detail the reasons for our findings and conclusions. Should these matters be examined on appeal, it would be for the Higher Tribunal to say whether those reasons and our decision can stand. Any suggestion that our findings were perverse or that we erred in Law are also a matter for appeal.
3. Although the Claimant's states in paragraph 3 of her application for reconsideration that the Reasons indicate the Tribunal was not impartial in

the matter, she does not elaborate beyond asserting that the Reasons “mirror the views and statements” of Counsel for the Respondent (a point she makes again at paragraph 48 of her application). The Claimant does not identify the specific views and statements in question nor does she identify where, or to what extent, those views and statements are reflected in the Reasons and Judgment. Be that as it may, we are satisfied that we engaged objectively with the parties’ evidence and the documents in the case in reaching our findings and coming to a conclusion. The Judgment is structured so that the parties’ can understand the reasons for the Tribunal’s decision on each of the various issues in the case. We are satisfied that we arrived at an independent judgement in the matter and that the Judgment evidences this.

4. It is not entirely clear who the Claimant is referring to in paragraph 3 of her application for reconsideration when she refers to “a lack of integrity to cover up fraud, deception and unfavourable treatment”. However, in so far as the Claimant asserts that the Tribunal or Ms Baylis lacked integrity or that either of them was involved in covering up fraud, deception and unfavourable treatment of the Claimant by others, she has failed to provide any further detail or identify the basis for the assertion.
5. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals’ powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour Judge Eady QC set out the legal principles which govern reconsideration applications, and observed,

“The interests of justice have thus long allowed for 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.”

6. In her application for reconsideration the Claimant complains that the Tribunal met in private in Chambers to make its findings and come to a Judgment in the case. Her complaint in that regard, as well as her assumption that the Tribunal’s Judgment is merely provisional, is misconceived. The Hearing itself was in public, and at the conclusion of the parties’ evidence and submissions, which took three days, the Tribunal explained that it would be meeting in private in Chambers on 4 November 2021. Such discussions always take place in private in the absence of the parties and the public. The parties were advised that if the Claimant succeeded in her complaints there might be a Remedy Hearing at a later date. In the event, a Remedy Hearing was not required as the Tribunal was able to deal with that part of the Claim that had succeeded, namely the Claimant’s claim for wages, expenses and holiday pay. The Claimant does not suggest in her application for reconsideration that the Tribunal miscalculated the sums outstanding to her.

7. As Mr Cater did not appear as the advocate for the Respondents at the Final Hearing there is no reason to record his involvement in the case, which has no bearing on the Tribunal's findings or conclusions. Similarly, the Judgment identifies those who gave evidence rather than the names of those who might have given evidence but who, for whatever reason, were not called to give evidence. As regards the format of the hearing, namely CVP, the Claimant expressed no concerns or reservations at the time about this. Over the last 18 months or so, a great many hearings in this and other Tribunals and Courts have taken place remotely in view of the challenges resulting from the Coronavirus pandemic. As with all cases, the decision to proceed by CVP was made by a Judge after having first reviewed the file. The hearing itself proceeded without any apparent difficulties, certainly the Claimant did not identify that she felt disadvantaged in any way by the format. She participated fully throughout the hearing, intervening as appropriate, she gave evidence and was cross-examined, and in turn cross-examined the Respondent's witness, Ms Elaine Thomas at some length. She made detailed closing submissions. Her application for reconsideration evidences her ability to advance her arguments, in the same way she did at Tribunal by CVP.
8. At paragraph 7 of her application for reconsideration, the Claimant refers to what she describes as Ms Baylis' efforts to change and depart from the List of Issues. In fact, it was the Tribunal which, of its own initiative, gave consideration to whether the List of Issues fully reflected the legal basis of the Claimant's complaints and invited the parties' representations on the matter. This is referred to in paragraph 6 of the Tribunal's Judgment. Twice, on separate days, the Tribunal explained to the Claimant why certain of her complaints seemed to the Tribunal potentially to be complaints that she had been indirectly discriminated against. Notwithstanding she was given the opportunity to apply to amend her Claim to include such a claim, the Claimant declined the Tribunal's invitation in this regard and stated that she only wished to pursue the complaints in question by way of a claim that she had been directly discriminated against. She cannot complain about the matter if she now regrets that decision. Certainly, her attempts to call into question Ms Baylis' integrity in the matter are without foundation.
9. The Claimant's comments regarding the omission of certain documents from the Hearing Bundle do not support that it is necessary in the interests of justice for the Tribunal to reconsider its Judgment. The Tribunal dealt with this issue at paragraph 12 of its Judgment. The Tribunal ensured that it had available to it during the hearing any documents that the Claimant felt were relevant to the case, even where some of those documents were identical to documents already contained in the Hearing Bundle.
10. The Tribunal addressed the Claimant as Ms Smith throughout the hearing without any objection or concerns being raised. However, if the Claimant prefers to be referred to as Miss Smith, the Judgment can be amended pursuant to Rule 69. It does not necessitate reconsideration of the Judgment. Likewise if Ms Baylis' name has been mis-spelled.

11. At paragraphs 29 and 44 of her application for reconsideration the Claimant questions why the Judgment does not address her entitlement to notice pay. This was not an issue before the Tribunal since it was determined by Employment Judge Alliot at an Open Preliminary Hearing on 17 July 2020 when he ordered the First Respondent to pay the sum of £425 to the Claimant. That Judgment stands and is unaffected by our Judgment sent to the parties on 13 December 2021.

12. In our Judgment, paragraphs 62 to 106 of the application for reconsideration, together with the sections that follow, headed “Sex Discrimination – case number:3319930/2019 (Treatment and behaviour “less favourable”), “Damages and Injury to feelings compensation”, “Discrimination AND UNLAWFUL ACTS UNDER THE EQUALITY ACT 2010”, reflect the Claimant’s desire to continue litigating issues about which the Tribunal heard extensive evidence over the course of three days and in respect of which it was provided with upwards of 500 pages of documents to consider. The Tribunal weighed this evidence carefully and made detailed findings before coming to a Judgment. There is nothing new in the application for reconsideration, instead the Claimant is seeking to rehearse both the evidence she gave and the various arguments she put forward at the Final Hearing. The public interest that, as far as possible, there should be finality of litigation is a weighty consideration in this case and is not outweighed by the Claimant’s dissatisfaction with or unwillingness to accept the outcome. As noted already, the Claimant may pursue an appeal if she believes she has grounds to do so. However, she has not put forward any good reason why she should be permitted a second bite of the cherry before this Tribunal or why it is necessary in the interests of justice that the Tribunal should reconsider its Judgment. Her application has no reasonable prospects of success and in the circumstances the application is dismissed.

Employment Judge Tynan

Date: 31/1/2022

Sent to the parties on: 24/2/2022

N Gotecha

For the Tribunal Office