



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Josan

**Respondent:** Home Office

## JUDGMENT ON SECOND & THIRD RECONSIDERATION APPLICATIONS

The Claimant's applications dated **30 December 2021** and **22 February 2022** for reconsideration of the judgment given orally to the parties on **8 December 2021** and sent to parties **26 January 2022** and/or for reconsideration of First Reconsideration Judgment are refused because there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

1. I set out the relevant law, and the background facts, in my judgment on the first reconsideration application, which was prepared on 14 December 2021 and sent to parties on 26 January 2022 ("the First Reconsideration Judgment"). I take those matters into account, but do not need to repeat them in this document.
2. In her email of 30 December, copied to the Respondent, the Claimant makes some points about signing the settlement agreement and expresses the opinion that the settlement agreement might not be binding because, she says, she signed it under pressure from the Respondent which was applied by phone and email on 7 December 2021. She also says that the tribunal has the power to declare the settlement agreement not to be binding, referring to **Glasgow City Council v Dahhan** UKEATS/0024/15/JW. She refers to her medical history, including the medication she was on at the time of the hearing and states that she felt unable to express herself properly during the hearing. She says she felt intimidated by the Respondent's course of dealing with her over a long period.
3. In her email of 22 February, not copied to the Respondent, she says that "HO staff attended my home on 7/12/21", but does not name them. She says that there was a discussion about signing the agreement and she felt frightened. She refers to past alleged incidents which also caused her to be scared (at the time that they happened, and again on 7 December 2021). She makes

a comment about not getting legal advice, but I do not take that to mean that she is denying that she consulted a barrister about the settlement agreement.

4. It is correct that if a claimant asked the tribunal to make a decision or order, and if a respondent based its objection to that decision or order on the existence of a settlement agreement then, before agreeing with the respondent's position, the tribunal would have to decide (amongst other things) whether:
  - a. the parties had entered a contract and
  - b. if so, whether the contract complied with the statutory requirements for settlement agreements
5. It is also correct that, at the first of those stages (deciding if there was a contract) the tribunal would take into account all the ordinary principles of contract law, including whether the parties had capacity to contract, whether there was fraud, misrepresentation, mistake, etc.
6. However, as explained in the First Reconsideration Judgment, we made no decision, on 8 December 2021, as to whether a settlement agreement existed, such that the claim could not continue. The Respondent informed the tribunal that that was its position, but the panel did not see the alleged agreement. The reason that the judgment dismissing the claim was issued is that the Claimant withdrew the claim, in the circumstances set out more fully in the First Reconsideration Judgment.
7. Rather than an application for us to set aside the settlement agreement, the reconsideration application really is that we should decide either that the Claimant had a mental impairment such that she lacked the capacity to withdraw her claim during the hearing on 8 December 2021 and/or that it is in the interests of justice for us to decide that the Respondent had placed her under such duress prior to the hearing on 8 December, that that duress was still operating, and caused her to withdraw the claim.
8. If we did, hypothetically, completely revoke the judgment of 8 December 2021 (given orally that day and sent to parties on 26 January 2022) which dismissed the claim upon withdrawal, then that would place the parties back in the position they were in at around 10am on 8 December 2021. In other words, the next thing would (presumably) be that there was an application from the Respondent for the claims to be dismissed on the basis that a valid settlement agreement existed. I am not seeking to speculate about what the outcome of that hypothetical application would be; amongst other things, I have not seen the alleged agreement, or heard argument about it.
9. The Claimant has no reasonable prospects of demonstrating that she lacked the capacity to withdraw the claim. By her responses to questions, she demonstrated that understood the explanations that were given to her on various matters, including about the effects of withdrawing the claim.
10. The Claimant has no reasonable prospects of demonstrating that because of past duress she was still under such duress during the hearing on 8 December 2021, that it would not be in the interests of justice to treat her withdrawal as binding on her. She appears to make no allegations about the Respondent's counsel for the hearing (who, we were told, was not involved

in the discussions on 7 December 2021) and, in any event, the discussions were led by the panel. We twice sent the parties back to their waiting rooms to reflect, and we made clear to the Claimant that she should take time over her answers, and that she should only withdraw if she was sure that is what she wanted to do. The Claimant's argument that she was under such duress that she could not disagree with the Respondent is inconsistent with her comments that she would agree to receive the sums specified in the alleged agreement, but wanted to know if the panel could do anything about the other clauses in the agreement (relating to re-employment, for example). Similarly, she felt able to ask the Respondent to make arrangements to collect the trial bundles from her.

11. For the reasons mentioned above, the application has no reasonable prospects of success and is refused.

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**Employment Judge Quill**

Date: 22 February 2022

JUDGMENT SENT TO THE PARTIES ON

7 March 2022

FOR THE TRIBUNAL OFFICE