Case No. 2203057/2019/W

EMPLOYMENT TRIBUNALS

Claimant:	**Miss B Pawlicka**
Respondent:	**Gregory Park Holdings Ltd** **T/A Four Seasons Hotel**
Heard at:	**Bristol (decision on papers in Chambers)**
Before:	Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the Judgment dated 22 January 2021 which was sent to the parties on 29 January 2021 ("the Judgment"). The grounds are set out in her email dated 30 January 2021.

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

4. The grounds relied upon by the claimant are difficult to identify, but within the email the claimant complains that (a) the case should not be dismissed without "recognition of the disability discrimination aspect of it;" and (b) the reserved judgment of 18 November 2020 contains errors of fact /law.

5. In relation to the argument that the claim included an allegation of disability discrimination the claimant argued that:

   (i) the London Employment Tribunal failed to accept or acknowledge a claim for disability discrimination which the claimant had filed on 10 September 2018 and the claimant did not receive an ET3 in respect of the claim;
   (ii) the respondent acknowledged a reference to a disability harassment claim in the ET3 in respect of these proceedings, because it referred to the claimant suffering an injury at the hotel at which she worked.

6. The claimant did not raise any matter relating to the claim containing a complaint under s.26 Equality Act 2010 ("EQA 2010") of harassment related to disability during the hearing. In any event, such a claim was not part of the claim before me and would be bound to fail as a cut to a finger, which was the injury about which the claimant complained, would not constitute a disability within the meaning of s.6 and Schedule 1 of the EQA 2010. It would be quite unlawful and perverse not to dismiss claims of unlawful detriment contrary to section 44 ERA 1996 which was properly instituted but had no legal basis as the claim could not be brought by a worker, on the ground that there was another claim of disability discrimination which was not made and was not accepted by the Tribunal.

7. This ground for reconsideration therefore demonstrates no reasonable prospect of the Judgment of 22 January 2021 being varied or revoked.

8. The claimant identified the following matters which she alleged were errors in the Judgment of 18 November 2020:

   (i) She was not employed on a part time basis by the Ministry of Defence ("MOD") during her employment by the respondent, nor was she employed by the MOD at the time of her dismissal.
   (ii) Contracts of employment do not form part of the contract law as workers are unable to regulate their activities because they have no bargaining power.

9. In relation to the ground that it amounted to an error of law to consider the effect of the contract in determining the claimant's employment status for the purposes of s.230 ERA 1996, that is an argument in relation to the Judgment of 18 November 2020, not the Judgment of 22 January 2021. The claimant cannot seek through an application for reconsideration of one Judgment to obtain a further, unpermitted, right of reconsideration of a different, earlier,

Judgment, particular where that right has already been exercised and the second application is out of time in any event. The claimant's permitted route of challenge is by way of an appeal to the Employment Appeal Tribunal.

10. This ground for reconsideration demonstrates no reasonable prospect of the Judgment being varied or revoked.

11. Lastly, the claimant argues that the Judgment of 18 November 2020 included factual errors in relation to her employment by the MOD. The application does not set out why the findings were wrong or any alternative factual position. Again, the ground relates to the previous Judgment of 18 November 2020 not the Judgment of 22 January 2021. Furthermore, even if a further application for reconsideration of the first Judgment were permitted, which it is not, in so far as the application entreats me to reconsider and review my decision on matters of fact which I have previously determined, the Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review 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 the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".

12. There was no denial of natural justice in this case; rather I heard the evidence and found on balance the facts to have been those recorded in the Judgment. That is the usual process of a Tribunal where facts are disputed.

13. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Midgley
Date: 10 March 2022

Judgment sent to the parties: 11 March 2022

FOR THE TRIBUNAL OFFICE