



EMPLOYMENT TRIBUNALS

Claimant: Mrs O Swieca

Respondent: Lindal Valve Company Ltd

Before: Employment Judge Tuck QC (sitting alone)

JUDGMENT

The claimant's application dated 7 February 2022 for reconsideration of the judgment sent to the parties on 26 January 2022 is refused.

REASONS

1. The claimant's application for a reconsideration, received by email on 7 February 2022, seeks correction of paragraph 23 that the email cited was sent at 08.16am, not 8.16pm. That correction is duly made.
2. The application for reconsideration relies on three grounds:
 1. That the Respondent's late submission of evidence ought not to have been permitted, and was such that the parties were not on an equal footing.
 2. That while emails dated 28 and 29 September 2021 were relied upon by the Respondent as showing an intention to terminate the Claimant's employment, this intention was not acted upon until after her disclosure.
 3. That the Respondent acquired an intention to dismiss because of the disclosure after it was made.
3. Rule 70 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that judgments may be reconsidered if it is in the interests of justice so to do. An application for reconsideration has been made under Rule 71 within the requisite time period, and I am required initially, under Rule 72 to consider whether this application has reasonable prospects of resulting in my original decision being varied or revoked. The approach to be taken at this 'sift' stage was set out by the Employment Appeal Tribunal in *Shaw v Intellectual Property Office* UKEAT 0186/20; 9 July 2021.
4. Considering carefully the entirety of the application for reconsideration, I have reached the view that there is no reasonable prospect of the original decision being varied or revoked.

5. In relation to the late submission of evidence from the Respondent, this issue was aired fully at the Hearing and the Claimant had the opportunity to make submissions as to any aspects of that evidence to which less weight ought to have been attached given the late submission (as set out in paragraph 5 of the Judgment). Nothing in the reconsideration application shows why it is in the interests of justice to alter the substantive conclusions reached, on this ground.
6. The second and third grounds are both effectively summarized in paragraph 10 of the reconsideration application which states:

“The Claimant believes that the real reason for a dismissal was not relied on or connected with the emails dated 28th September 2021 and 29th September 2021 as they did not make out. As a result the Claimant believes that the principal reason for her dismissal was that she made a protected disclosure dated 30th September 2021.”

I understand the thrust of the submission to be that while an intention to terminate the Claimant’s employment was mentioned in the emails of 28 and 29 September 2021, that intention was not acted upon until after the alleged disclosure of 30 September 2021, by which time the disclosure was the principal reason.

7. The test being applied in an application for interim relief is whether the claimant is likely to succeed at a final hearing – whether she has a “pretty good chance” – as set out in paragraph 17 of the Judgment. Nothing in the reconsideration application persuades me that the Claimant has a reasonable prospect of the original decision refusing interim relief being varied or revoked.
8. The decision by the Respondent to terminate the Claimant’s employment appears to have been taken before she made any protected disclosure. Beyond her assertion, there is nothing to suggest that the making of the alleged disclosure on 30 September 2021 had any causative impact.
9. The Claimant will of course be able to put her case that the intention to terminate her employment expressed on 28 and 29 September 2021 was not acted upon until after her disclosure, such that the principal reason was the disclosure, at a Final Hearing.

Employment Judge Tuck QC.

Date 22 March 2022

JUDGMENT SENT TO THE PARTIES ON

23 March 2022

FOR THE TRIBUNAL OFFICE