



# EMPLOYMENT TRIBUNALS

**Claimant**

Ms SR Idu

v

**Respondent**

The Ipswich Hospitals NHS Trust

**Before:** Employment Judge Laidler (On the papers)

**On:** 6 April 2022

## JUDGMENT ON RECONSIDERATION APPLICATION

The claimant's applications of the 18 May 2021 and the 23 January 2022 for reconsideration are refused.

### REASONS

#### **Application dated 23 January 2022**

1. The claimant's application for reconsideration dated the 23 January 2022 was seen by the judge on the 6 April 2022. It seeks reconsideration of a reconsideration sent to the parties on 13 January 2022 which rejected the claimant's application for reconsideration of the Reserved Judgment dated 18 August **2017**.
2. In the initial reconsideration application, the claimant relied upon new evidence exposed by the Guardian Newspaper which 'affect the application for reconsideration.' The report in the Guardian of 9 December 2021 concerned an independent report into events at the West Suffolk Hospital in Bury St Edmunds which occurred in 2017 and 2018. It refers to the behaviour of the then Chief Executive and Jan Bloomfield who was then Director of Workforce and Communications.
3. The tribunal rejected the claimant's application for reconsideration finding that:

## Case Numbers: 3400400/2016 and 3400835/2016

The outcome of the independent review into the handling of whistleblowing at the West Suffolk NHS Foundation Trust is of no relevance to the matters that were before the tribunal in May 2017 in relation to the claimant's case. In any event the involvement of Mrs Bloomfield was only in relation to the appeal panel of which she was one of four. The panel was unanimous in its decision to reject the claimant's appeals.

And that:

The application also ignores the fact that the tribunal found against the claimant in all the claims brought by her and in particular that 'the Claimant was not unfairly dismissed by the Respondent, either for making protected disclosures or at all' and that the 'Respondent did not unlawfully subject the Claimant to any detriment on the ground that she had made protected disclosures.' The newspaper report that the claimant now seeks to rely upon is not 'new evidence' which will in anyway lead to the original decision being set aside or varied.

4. The claimant now makes application for reconsideration of that reconsideration judgment. She again relies upon the review in asserting it undermined the Reserved decision of E J Sigsworth and members (the 'Sigsworth tribunal')
5. The claimant now states however that she relies upon this review as 'new evidence' to support her application for reconsideration of the Costs judgment sent to the parties on the 5 May 2021. No where in the reconsideration application of the 10 December 2021 does the claimant refer to seeking reconsideration of the Costs judgment.
6. Although it appears from the automated response produced by the claimant that she lodged an application for reconsideration of the Costs judgment on the 19 May 2021 the application itself has never been found in the Watford in box and was never forwarded therefore to the judge. It has only because of correspondence from the Employment Appeal Tribunal that it has come to light and a copy now been seen by this judge. The judge had instructed a letter to that effect to be sent to the EAT at the beginning of February 2022 but has recently discovered that was only sent on the 29 March 2022.
7. As the claimant is now seeking to argue that the 'new evidence' justifies a reconsideration of the Costs judgment both of these applications will be dealt with in this decision.

### Relevant Rules

8. The relevant provisions of the Rules are as follows:-

#### “RECONSIDERATION OF JUDGMENTS

##### Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

**Application**

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

**Process**

- 72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.
- (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
- (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

**18 May 2021 application for reconsideration**

9. This application has only just been seen by the judge.
10. The claimant refers to 'abuse of without prejudice rule' and the respondent referring to ACAS communications. The tribunal was taken to a letter from the respondent's solicitors of the 30 November 2016 and detailed reference was made to it in its Reserved Judgment on costs. This was a letter clearly written 'without prejudice save as to costs.' It repeated a previous offer to settle on a commercial basis of £26,000 and made that offer again. It was entirely appropriate that the tribunal's attention was drawn to this when the issue of costs came to be dealt with.

11. The claimant referred to statements made by another Employment Judge at an earlier preliminary hearing. They are not relevant to the consideration given by this tribunal at the determination of the respondent's costs application.
12. The claimant alleges that costs paid by her in relation to appeal proceedings were 'redirected away from the Ipswich Hospital NHS Trust to a bank account Colchester hospital related to chief executive....' This is not a matter which was before this Employment Tribunal and is not relevant to the determination by this tribunal of the respondents costs application
13. The tribunal had regard to all the information before it concerning the claimant's means and employment position. It had to consider that the actual costs incurred by the respondent were £127,264.43 but that it had limited its claim to the £20,000 to avoid further costs associated with a detailed assessment.
14. Issues relating to the GMC were not relevant to the tribunal's decision on costs.

#### **The 13 January 2022 reconsideration application**

15. This was also not seen by the judge until the 6 April 2022.
16. The claimant states that her application of the 10 December 2021 when she submitted 'new evidence' was seeking reconsideration of the Costs Judgment. That was not clear from the application. In the same sentence however she also refers to 're-opening liability case' so it does appear that she is relying upon the Guardian article to support not only a setting aside of the Costs judgment but the original Reserved Decision of 2017.
17. The events with which the Sigsworth Tribunal were concerned occurred between 2014 and 2016. The article in the Guardian Newspaper of 9 December 2021 which the claimant now seeks to rely on was reporting on the independent report into events at the West Suffolk Hospital in Bury St Edmunds which occurred in 2017 and 2018 and was commissioned in 2020. It refers to the behaviour of the then Chief Executive and Jan Bloomfield who was then Director of Workforce and Communications.
18. The claimant produces a copy of a letter dated 12 July 2016 setting out the outcome of her appeal hearing, which confirmed that Jan Bloomfield was on the panel that heard her appeal both against the grievance outcome and the disciplinary outcome. Mrs Bloomfield was one of four members of the panel.
19. The claimant states that it conflicts with paragraph 13 (sub-paragraph 14) of the tribunal's Conclusions in her case in which it was stated that having Mrs Bloomfield on the panel as a fourth member of it rather than having a panel of only three was an 'advantage' to the claimant. The claimant now states it was clearly not to her advantage in view of what has been said about Mrs Bloomfield in a completely unrelated matter.

20. Having now considered both reconsideration applications it is clear that the outcome of the independent review into the handling of whistleblowing at the West Suffolk NHS Foundation Trust is of no relevance to the matters that were before the tribunal in May 2017 in relation to the claimant's case. In any event the involvement of Mrs Bloomfield was only in relation to the appeal panel of which she was one of four. The panel was unanimous in its decision to reject the claimant's appeals.
21. The application also ignores the fact that the tribunal found against the claimant in all the claims brought by her and in particular that 'the Claimant was not unfairly dismissed by the Respondent, either for making protected disclosures or at all' and that the 'Respondent did not unlawfully subject the Claimant to any detriment on the ground that she had made protected disclosures.' The newspaper report that the claimant now seeks to rely upon is not 'new evidence' which will in anyway lead to the original decision being set aside or varied. All employment tribunal cases are determined on their own facts. The independent review into the West Suffolk Hospital was not considering the claimant's case and the procedure followed. The matters it was investigating had not occurred at the time the claimant was dismissed. Its findings are not therefore 'new evidence' which in anyway undermine the decision reached by the Sigsworth tribunal or this tribunal's judgment on costs.
22. There are no grounds in either application for varying or setting aside the Reserved Judgment or the Costs Judgment both of which are refused.
23. It is also necessary to confirm, as was recorded in the Costs Judgment that E J Sigsworth has retired which was why this Employment Judge and new lay members were appointed by the Regional Employment Judge to hear the costs application. E J Sigsworth is not, as the claimant suggests in her January 2022 application 'currently dealing with' her case.

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Employment Judge Laidler

Date: 6 April 2022

Sent to the parties on:.....

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For the Tribunal Office