



EMPLOYMENT TRIBUNALS

Claimant: Miss AB

Respondent: The Commissioners for Her Majesty's Revenue and Customs

JUDGMENT

The claimant's application dated 30 March 2022 for reconsideration of the judgment sent to the parties on 15 August 2020 is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked. The Claimant has applied for reconsideration more than 14 days after the judgment was sent to her, and it is not in the interests of justice to extend time. The Claimant is attempting to relitigate matters determined by the Tribunal and the alleged new material would not in any event have altered the judgment.
2. Rule 72 requires that the hearing judge decides whether there is any reasonable prospect of the original decision being varied or revoked. The Claimant has said that she does not wish me to make the decision, saying that the decision is inconsistent and unpalatable, and no reasonable tribunal could have made the findings made by the final hearing tribunal. However, the hearing judge is best placed to make this decision as they know the evidence before the Tribunal and the findings of the panel, and is required under Rule 72 to do so.
3. The Claimant has applied outside of the 14-day window under Rule 70. She argues that she was not aware of this option until she was informed of it by the Employment Appeal Tribunal on 25 March 2022. Having checked the administration file, I can see that the standard information was sent to the Claimant with the judgment on 15 August 2020, including information about reconsideration. The letter from the Tribunal underlines the information about reconsideration. The Claimant received this letter and the judgment, as shown by her prompt request for written reasons on 17 August 2020 regarding applications made by her during the course of the final hearing. I therefore cannot accept that the Claimant was unaware.
4. I am also aware that the Claimant applied out of time to the Employment Appeal Tribunal to appeal the judgment out of time, relying at least in part on the grounds of health (I have not seen the grounds of appeal, only the Registrar's decision). The Registrar was not persuaded.

5. I do not consider that it is in the interests of justice to extend time for a reconsideration.
6. However, if I am incorrect about refusing to extend time, I have considered the substantive application. The grounds of the Claimant's reconsideration application are limited. She is asserting that there is new material not before the hearing Tribunal arising from the Internal Governance report about her conduct dated 21 October 2019. The Claimant also complains that she was denied the opportunity to cross-examine the authors of the report. The Internal Governance report about Mr XY and the transcripts of its interviews were before the Tribunal.
7. The Claimant comments that *"While I could have requested the document, I received on 20th May 2021 ... earlier than I did..."*. She would have known that she was interviewed about her conduct on 11 September 2019, and it appears more likely than not that the Claimant knew of the existence of the report before the final hearing in these proceedings. The Claimant is particularly exercised about the apparent reference to Mr XY saying that he *"was on autopilot going 'like that' (reaching) over her shoulder"*.
8. I considered the Ladd v Marshall [1954] EWCA Civ 1 requirements, summarised by Lord Denning as *"In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."* The Claimant appears to be saying that this is evidence that she could have obtained for the proceedings under 1600083/19 and did not – I read her statement as saying that she knew of the Internal Governance report and chose not to ask to see it before the final hearing, meaning that she says that she only saw this account of Mr XY after the final hearing. The Claimant asserts that there must be other evidence not disclosed, but I cannot deal with conjecture. The Claimant also talks about measurements which she provided – this was evidence available to the Claimant before the final hearing.
9. I consider that the Claimant's application fails to meet the second requirement of Ladd v Marshall. The author(s) of the report were not witnesses to the core events complained of by the Claimant, particularly the alleged sexual assault that the Tribunal found did not take place. The Claimant places a great weight on the reference to her shoulder for this application. However, the Tribunal made its decision on the basis of all the evidence before it, including the oral evidence of the Claimant and Mr XY, and was aware of the shoulder point as shown in its detailed Judgment. In addition, the Claimant's comments about the email from the inspector from South Wales Police are noted but this email was not critical to the final judgment and was before the Tribunal. I cannot see any reasonable prospect of the alleged new material having an important influence on the result of the case, including its findings about the actions of Mr XY or the claim that the Claimant faced disciplinary action for reporting a sexual assault to the police and Tribunal.

Employment Judge C Sharp

Dated: 5 April 2022

JUDGMENT SENT TO THE PARTIES ON 7 April 2022

FOR THE TRIBUNAL OFFICE Mr N Roche