



EMPLOYMENT TRIBUNALS

Claimant: Miss M. Francis

Respondent: Morgan Sindall Property Services Limited

Heard at: London Central (on paper)

On: 8 April 2022

Before: Employment Judge J Galbraith-Marten

JUDGMENT UPON RECONSIDERATION

The Claimant's application dated 17 March 2022 for reconsideration of the Judgment sent to the parties on 3 March 2022 is refused.

REASONS

1. Rule 70 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that an Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied, or revoked.
2. Rule 71 states that 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.

3. *The Employment Appeal Tribunal held in Outasight VB Ltd v Brown 2015 ICR D11, EAT, that necessary in the interests of justice in accordance with Rule 70 affords the Tribunal a wide discretion that must be exercised judicially. The Tribunal must determine whether reconsideration is appropriate in the circumstances having regard to the party seeking the reconsideration but also the other party to the litigation and the public interest requirement for finality in proceedings.*
4. In this case, written reasons were sent to the parties on 3 March 2022 and the Claimant made an in-time application for reconsideration of the Tribunal's decision. The Claimant seeks to adduce new evidence in relation to the Road Traffic Act 1988 and the government guidance in respect of drug driving sampling.
5. The Court of Appeal established in *Ladd v Marshall [1954] 3 All ER 745, CA*, that in order to justify acceptance of new evidence it is necessary to show; (a) the evidence could not have been obtained with due diligence for use at the original hearing, (b) the evidence is relevant and would have had an important influence on the hearing and, (c) the evidence is credible.
6. As set out at paragraph 85 of the written reasons, the Tribunal asked the parties to address it on the drug driving regulations and whether they were relevant during their submissions. This followed from evidence submitted by Mr. MacFarlane as set out at paragraph 84 of the written reasons.
7. The parties had notice of the Tribunal's request and both addressed the Tribunal accordingly. The Respondent's representative confirmed the regulations were not relevant or material to the Respondent's decision making in respect of the Claimant's dismissal and the Tribunal should attach no weight to them. The Tribunal accepted that submission as set out at paragraph 86 of the written reasons.
8. Therefore, and in relation to the new evidence submitted by the Claimant, even if she had produced it during the original hearing, it would not have had an important influence on the hearing. As such, the principles of Ladd are not met.
9. In the circumstances, there is no reasonable prospect of the original decision being varied or revoked and the application is refused.

Employment Judge J Galbraith-Marten

11/04/2022

REASONS SENT TO THE PARTIES ON

11/04/2022

FOR THE TRIBUNAL OFFICE