

EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs R Hutchinson

v

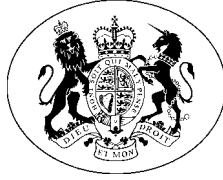
Avery Homes Hanford Limited

JUDGMENT

The Claimant's application dated 8th April 2022 for a further reconsideration of the Judgment sent to the parties on 2nd February 2022 is dismissed.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below. Further or alternatively, the Claimant's application dated 8th April 2022 is substantially the same application as has already been made and refused, and there are no special reasons for dealing with the application differently.
2. In so far as the Claimant is contending that the Tribunal decisions involved any legal error, then, in the absence of the Tribunal accepting, through reconsideration, that there has been any legal error, any challenge to the decisions should properly be directed to the Employment Appeal Tribunal to which the Claimant has now appealed on grounds which appear to be similar, in part, to those raised by her two applications for reconsideration.
3. The relevant background in relation to the Claim, the original Judgment dated 28th January 2022 and the previous application for reconsideration were set out in the Judgment and Reasons dated 30th March 2022. The Claimant has now sent an application to the Tribunal under cover of an e-mail dated 8th April 2022 which described the application as an application for reconsideration and an application to admit evidence / fresh evidence.
4. Two of the original grounds for reconsideration were that the Claimant contended that it was common practice for staff to sit at the care station and take advantage of a drink (even during the Coronavirus pandemic) and the sanction was too harsh because the Respondent should have put in place arrangements to enable drinks to be taken on a break (and not a working break) which would have allowed the Claimant not to have the need to remove her



mask. These grounds were being relied upon in support of a contention that the award made to the Claimant should not have been reduced as it was.

5. In the new application the Claimant is making the point that the Respondent would have been under a duty to provide employees such as the Claimant with a rest break which complied with the requirements of the Working Time Regulations 1998, as also considered in the case of *Grange v Abellio London Ltd* [2017] ICR 287. However, this is essentially the same argument as that previously pursued, namely that the Claimant's conduct arose from the alleged inadequacy of the Respondent's arrangements in respect of breaks and any assessment of that conduct for the purposes of any reduction to her award should have reflected this.
6. It follows that the same reasoning would be applicable in considering any such application as that set out in the reasons given for dismissing the previous application.
7. The fact that these are issues which were either raised, or could have been, at the original hearing is illustrated by the fact that, in support of the new application, the Claimant is seeking to refer to evidence which it is stated that her representative has noted as having been given at the original hearing. Whilst it is not necessary to consider, for present purposes, the precise accuracy of any note of evidence, the subject matter of the quoted notes is clearly in relation to the issue of arrangements for breaks.
8. It further follows that the part of the application which has been described by the Claimant as seeking "*to admit evidence / fresh evidence*", really seems to be applying to place reliance upon evidence which was noted as having been given by witnesses or else appeared in the trial bundle. This is not an application to introduce or rely on new evidence which could not have been introduced at the original hearing but an application to rely upon evidence which was previously already available in support of the further reconsideration application, in which case the application is either a part of the further reconsideration application or falls to be dismissed on the same grounds. Moreover, the reasoning applied in rejecting the previous reconsideration application, as summarised in the final paragraph of the Reasons dated 30th March 2020, is equally applicable as reasoning for rejecting this new application which, if allowed, would be similarly contrary to the principle in respect of finality of litigation. The application is refused

Signed electronically by me

Employment Judge Kenward

Dated 5th May 2022