Case No: 2413947/2020

EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Y

JUDGMENT

The claimant's application dated 13 April 2022 and received on 14 April 2022, for reconsideration of the judgment sent to the parties on 14 March 2022 is refused.

REASONS

1. The application for reconsideration was submitted outside the 14day limit referred to in Rule 71. However, notwithstanding that it was submitted out of time I have considered the application because I am satisfied that it is in the interests of justice to do so.

2. The application for reconsideration submitted by the claimant is contained in a letter which refers to various matters. In relation to the question of reconsideration it says this:

   "Application for reconsideration of a Judgement prior to appeal to the EAT

   I ask Employment Judge Cookson to reconsider the decision on the following grounds;

   1. The judgement contains errors, omissions and inaccurate miss-statement of facts, in the following paragraphs; 2, 3, 4, 5, 6, 12, 13, 14, 15, 16, 19 (seven), 20, 22, 24, 25, 26, 27, 28, 29.

   I ask for the opportunity to appear before a Judge to show all this, and to show that there was a misrepresentation and alterations of evidence documents put before the Judge on the day. The documents put before the Judge were not the ones presented by the claimant. There were also documents sent by my partner and placed on file on 29 November 2021, and these would have been

available for the Judge to examine, with identifying information relating to my partner and her medical information.

2.Error of fact; the judge had been provided with the wrong facts by the respondent. The judge did not have all the right information in the preliminary bundle provided by the respondent. With the right information and facts (that had been provided by me and my partner), I think the judge would not have made this decision, and I am asking for the judge to reconsider disability, with the correct information and facts before her.

3.Evidence tampering; the judge rejected the evidence because the respondent unlawfully altered my partners medical evidence, and misrepresented it to the judge (in our absence) to obtain a judgement in its favour. The judge reached a decision based on evidence that had been altered by the respondent, this amounts to procedural unfairness, and is injustice to the claimant. They do not have permission to alter these documents of evidence.

4.Unreasonable and unlawful behaviour, and intent to mislead the Employment Tribunal; in the claimant's absence the respondent misrepresented facts, evidence and information to purposely deceive a Judge, this was unfairly biased towards the other party.

5.Victimisation and Harassment; there has been a series of procedural failures during these proceedings and unlawful discrimination has occurred, and I have raised my concerns many times. Since the start of these proceedings the respondent has subjected my vulnerable, disabled partner to ongoing victimisation and harassment because she is a witness in support of my claim. The way my partner has been treated during these proceedings has caused both of us extreme emotional and psychological distress, trauma and it has directly caused the breakdown of our health.

6. Witness intimidation; my partner has felt intimidated by the respondent and it's unreasonable and unlawful behaviour during these proceedings, which has caused her to feel demoralised and humiliated, and trepidation about appearing because of this. All this, and the fear of further public disclosures made by the respondent, has caused my partner's physical and mental health to deteriorate considerably and made her seriously unwell.

I have attached a VICTIM STATEMENT & WITNESS INTIMIDATION ACCOUNT from my partner.

In the Judgement Employment Judge Cookson discusses the medical evidence she had before her which was provided by the respondent in its bundle. In Para. 29 the judge states; 'It is too heavily redacted to be sensibly interrogated. I cannot reasonably conclude that it relates to the claimant's partner'.

The full evidence has not been heard and explored, therefore I ask the Judge for the opportunity to prove that the actual medical evidence provided on three

occasions in October and November 2021 does in actual fact relate to my partner, without a doubt."

3. The application for reconsideration relates to a judgment made following a hearing on 9 March 2022 which had been listed to determine a preliminary issue before a final hearing listed for June 2022. The claimant did not attend the hearing and my decision was reached in her absence under Rule 47. My judgment explains the decision I took to proceed in her absence as follows:

   "3.The claimant did not attend today's hearing. My clerk made attempts to contact her by telephone and email, but this proved unsuccessful. It was confirmed that the respondent had had no further contact with the claimant following the emails of the previous day. I delayed the start of the hearing both to facilitate my reading of the bundle of documents and in the hope that we would receive some contact from the claimant. However, when no such contact was received I started the hearing and heard representations from the respondent which reflected the grounds on which it had objected to the stay of the proceedings and to the postponement set out in the letters to the tribunal.

   4.In the circumstances I determined that the hearing [should] proceed in the absence of the claimant in accordance with my powers under Rule 47. Under that rule, "if a party fails to attend or to be represented at the hearing, the tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, that the reason for the party's absence".

   5.I took into account the following matters. In this case the claimant's application for postponement had not been granted and she was aware of that. Although an application for postponement on the grounds of ill-health have been made, the claimant had failed to provide any medical evidence in support of that application which appeared to have been made in response to the decision of Regional Employment Judge Franey that the claimant's application for a stay of hearing be considered at the outset of today's hearing. Her first application for a postponement was not made on the grounds of her health and it was not suggested that the claimant had fallen suddenly ill and would not have been able to get medical evidence. The claimant had offered no evidence or substantive reason why she could not attend the hearing if her partner was too unwell to attend. I also took into account that this is only the latest in a series of preliminary hearings and it is clear from the case management orders of Employment Judge Leach that there are still significant matters to be resolved which present a hurdle to the final hearing going ahead. It is particularly relevant that this case is listed for final four-day hearing commencing on 28 June 2022. The respondent had prepared for this hearing and had attended ready to deal with the matters listed in accordance with Employment Judge Leach's orders. In those circumstances and notwithstanding the prejudice to the claimant, I concluded that it was in accordance with the overriding objective to proceed with the hearing in the claimant's absence and refuse the postponement application.

   The claimant's application for stay of these proceedings

7.The first matter I considered was the application for a stay of the proceedings on the grounds set out in the claimant's 21 page letter of 4 March 2022. The terms of that application not entirely clear. The claimant says "I request permission for intervention from the EHRC into a number of failures to comply with the public sector equality duty under section 149 EqA" and "I request permission to appeal for a judicial review under section 30 Equality Act 2006 based on failures to comply with the public sector equality duty in ways that breach the EqA, the Human Rights Act 1998 and European Convention rights." It is not clear what steps, if any, that the claimant has taken in order to pursue these matters. It is also not clear if this request for permission is addressed to the tribunal but, for the avoidance of doubt, these are not matters over which this tribunal has any jurisdiction. The claimant goes on to say that she "does not consider that it will be in the interests of justice to herself and her partner for the hearing of 9 March 2022 to proceed until these matters dealt with" but it is not clear why she says that.

8.In the letter the claimant goes on to refer to the powers which the EHRC has to assist an individual who is bringing proceedings and under the heading "Claims" identifies some 21 matters which she says are claims to be brought on behalf of herself and her partner. The claimant does not identify what if any steps she has made to approach the EHRC for assistance and/or funding or to raise any of the other issues. I note that at previous hearings it has been explained to the claimant and her partner that the tribunal has a limited and specific jurisdiction to deal with disputes which arise from and relate to the workplace and does not have jurisdiction to deal with wider matters which are the jurisdiction of other courts .

9.After considering the claimant's correspondence and the respondent's submissions, I concluded that that it would not be in accordance with the overriding objective for the stay of proceedings sought to be granted. There is no suggestion that legal proceedings in any other jurisdiction have been issued. In any event I see nothing in the claims she has referred to which would suggest that a stay in these proceedings is required or appropriate. For example, it is not suggested that if the employment tribunal hearing is to go ahead there is a danger of an employment tribunal panel making findings which could embarrass a judge in a higher court and I see no reason for such a risk arising.

10.The overriding objective requires that I deal with cases fairly and justly so far as practicable to ensure that the parties are an equal footing; to deal with cases in a way which is proportionate to the complexity and importance of the issues; to avoid unnecessary formality and to seek flexibility in the proceedings; to avoid delay, as far as is compatible with the proper consideration of the issues; and to save expense. If the stay in these proceedings sought is granted it is inevitable that there will be a significant delay before the case can come to final hearing. The claim in this case was issued on 11 September 2020. It is a case which involves allegations of unlawful discrimination, detriment on various grounds including that the claimant has raised protected disclosures as well as allegations of breach of contract and other matters. There are clearly significant factual disputes between the parties which will have to be resolved by the employment tribunal and any further delay will inevitably impact on the voracity

of that evidence. Further the respondent will face costs and expense in addition to that already incurred in the course of the various hearing to date. In short I concluded that I should not stay this case."

4. The claimant does not explain in her reconsideration application why she failed to contact the tribunal on 9 March 2022. The medical evidence she refers to in her application consists of a referral dated 2 March 2022 for assessment by mental health team on 22 April 2022 and copies of some texts messages from her GP providing details of a mental health team helpline in December 2021 and checking that she had been contacted about a referral, and a text in February 2022 with details of a website which makes reference to talking therapies. There is however no evidence from her GP or other health professional which contains any sort of evidence that the claimant was unfit to attend the hearing on 9 March 2022 and no explanation for why such evidence is available could not be produced.

5. It is a sad reality that many individuals who appear in the employment tribunal every day are receiving treatment for mental health problems of varying degrees, but they are nevertheless able to participate in hearings. I cannot accept that simply the fact that someone has been referred for a mental health assessment or they have been in contact with their GP about a mental health issue is evidence that that they are unfit to attend a hearing without something more. There is nothing in the claimant's letter and reconsideration application which leads me to conclude that I was wrong to proceed under Rule 47.

6. Turning then to the substantive grounds of the reconsideration application, the claimant says that my judgment contains errors, omissions and misstatement of facts but she fails to identify what those are and she goes on to make serious allegations about the conduct of the respondent's representatives in relation to the bundle for the preliminary hearing but without offering sufficient detail to enable me to make an assessment of the veracity of those allegations. In any event if the claimant had points which she wished to make about the preliminary hearing bundle, the hearing on 9 March was her opportunity to do so. She now seeks to have me rehear that preliminary hearing by way of reconsideration without explaining in any meaningful way why I should do so, beyond asserting there are errors and there has been wrongdoing by the respondent and its representatives. However, I reached a reasoned decision on the basis of the information available to me at the hearing as shown by my judgment.

7. Rule 72 of the Employment Tribunal Rules of Procedure sets out the procedure for reconsideration, on the grounds that the interests of justice are such that reconsideration is appropriate.

8. Under the previous 2004 Rules, old rule 34(3)(c) provided a ground for review if the decision was made in the absence of a party. This is a matter that is now encompassed within the single 'interests of justice' ground, but it is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed to attend a hearing, without good and genuine reason. That must be particularly the case where an application for postponement of the hearing had already been made and refused and the claimant was aware the hearing was going ahead.

9. As the reasons for my judgment explained, I was satisfied that the claimant had had the opportunity to offer evidential support for her claim that her partner is a disable person but she had failed to comply with directions made by employment judges at previous hearings. I did not simply accept the respondent's arguments at the preliminary hearing and find in their favour by default. I was satisfied on the basis of the documents in the bundle that the respondent's submissions were supported by the documents and were well made. I do not consider that there is anything in the reconsideration application which suggests I was wrong in that decision. I can see the claimant disagrees with my decision and is unhappy about it but that is almost always the case in litigation. No doubt most parties who have a decision go against them would like the judge to change their mind. However it is in the interests of all parties that there is finality in litigation, except in exceptional circumstances. Those exceptional circumstances do not include that a party should have the right to an issue heard again by the tribunal because they do not like the outcome.

10. I am also mindful that there is a final hearing in this case listed from 28 June to 1 July 2022. If I allow this application for a reconsideration, it appears inevitable that that it will not be possible for that final hearing to go ahead. Such an outcome would not be in accordance with the overriding objective which requires that as far as possible we avoid delay so far as is compatible with proper consideration of the issues. The claim in this case was issued in September 2020. There have already been a number of preliminary hearings with significant tribunal and judicial resource invested in seeking to get this case to the final hearing. The relisting of a final hearing in this case in these circumstances would also impact on the ability of this tribunal to list other claims for hearing. Only exceptional circumstances would justify taking steps which would result in those outcomes and I am not satisfied that the claimant has shown that those exceptional circumstances exist here.

11. It is not therefore in the interests of justice that the original decision be varied or revoked and there is no reasonable prospect of the application succeeding

Employment Judge Cookson

Date 17 May 2022

JUDGMENT SENT TO THE PARTIES ON

Date: 17 May 2022

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FOR THE TRIBUNAL OFFICE