



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Bashir

**Respondent:** Star Academies

**UPON APPLICATION** made by letter dated **30 August 2021** to reconsider the judgment dated **30 June 2021** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing:

## JUDGMENT

1. The claimant's application for the employment judge to recuse himself is refused.
2. The tribunal's judgment of 30 June 2021 is confirmed on reconsideration.

## REASONS

### INTRODUCTION

1. On 30 August 2021 the claimant made an application for reconsideration of the tribunal's judgment of 30 June 2021. That judgment was sent to the parties on 9 August 2021, and the time limit for the claimant's reconsideration application was extended by an order dated 20 August 2021, so that the application on 30 August 2021 was made within time.
2. The claimant's reconsideration application was extensive, but by an order dated 24 September 2021 only four elements of it were allowed to proceed. They were:
  - “1. *That the tribunal were wrong to find in her favour under the Fixed-term Employees Regulations, and that this element of our judgment should be revoked.*
  2. *That the email of 17 November 2017 from Mr Musa to Ms Park is a forgery.*
  3. *That the tribunal wrongly deleted para 4.5(a)-(c) from the list of issues.*
  4. *That the tribunal gave the wrong date for the mediation meeting in para*

*141 of our reasons.”*

3. The respondent submitted a response to this on 1 November 2021, and this in turn was subject to further comments by the claimant submitted (in amended form) on 16 February 2022.
4. As set out in an order of 9 March 2022, the claimant later said that she was not seeking revocation of our finding at point 1, so that only points 2-4 proceed for further consideration. The order of 9 March 2022 provided that the reconsideration would proceed without a hearing. What follows is a decision of the full tribunal panel, which met in chambers on 17 May 2022 to consider those elements of the reconsideration application that were allowed to proceed.

#### PRELIMINARY ISSUE - RECUSAL

5. On 8 May 2022, the claimant submitted an application for the employment judge (but not the non-legal members) to recuse himself. We take this as being an application for recusal both in respect of this reconsideration hearing and any subsequent remedy hearing.
6. The claimant's email of 8 May 2022 sets out the basis of her application. We will not comment on the detail of the allegations made by the claimant in this application, as they seem to be material which may later be the subject of enquiry by the Employment Appeal Tribunal (if the claimant has lodged an appeal against our decision), and will be dealt with in that context if necessary. Her application appears to be entirely founded on disputes with our findings and the employment judge's conduct of the hearing. She has not in her application identified any legal principle that would require the employment judge to recuse himself, and her application for the employment judge to recuse himself is refused.

#### THE APPLICATION FOR RECONSIDERATION

##### **The email of 17 November 2017**

7. The claimant takes issue with para 26 of our reasons, where we describe her allegation (in her closing submissions) that the email of 17 November 2017 was a forgery as a new matter that had not previously been raised by her.
8. She criticises the respondent's delay in exchanging witness statements, and its construction of the bundle, saying *“they were creating and adding further documents into the bundle without allowing me the opportunity to have them verified or to be able to rebut them. Mr Musa's alleged email of 17/11/17 was one such document.”*
9. She continues, saying *“the addition of documents affected my claims and list of issues which is why, I, as a litigant in person felt that I should have been allowed to alter my list of issues and make additions to them”, “I as a litigant in person with a mental health disability was wholly disadvantaged in that I had to prepare for cross examination of 9 witnesses and analyse their witness statements in a month and a half when, if the tribunal order had been adhered to, I would have had four months to prepare.”*, and *“I forgot to outline how Mr Musa's email had*

*information in it relating to safeguarding that he could not have known at that time as the person who reported the matter was not aware of it”.*

10. The substantive point that the claimant wishes to make in support of her claim that the email is a forgery is that it refers to the “collar incident” which the claimant says (by reference to the respondent’s ET3) Mr Musa would not have known of at the purported date of the email.
11. In its response, the respondent says that the relevant email was disclosed on 23 July 2020 (around 3½ months before the hearing started) with witness statements being exchanged on 2 October 2020. The respondent also says (as had previously been raised by the employment judge in his provisional views) that there was no allegation put to either Mr Musa or Ms Park that the email between them was a forgery, nor were they questioned by the claimant on the authenticity of the email. Finally, the respondent denies that the email is a forgery.
12. In her response (the “amended copy” dated 16 February 2022) the claimant says that she first became aware that the email of 17 November 2017 could not be correct on reading Ms Akhtar’s witness statement concerning the “collar incident”. She says that her questioning of Ms Park and Mr Musa was sufficient to establish that the email was a forgery, concluding that *“the bottom line is that my cross examination and the evidence shows that Mr Musa’s email had been forged.”*
13. The claimant does not dispute the dates given by the respondent for its disclosure of the email or for exchange of witness statements. It is not part of her case that she ever directly put the allegation of forgery to Mr Musa or Ms Park. It appears from her response that she had in mind during the hearing that the email was a forgery. She is clear that she *“did not know about the forgery until I had read Zaina Akhtar’s witness statement”* which according to the respondent she would have had on 2 October 2020, a month before the hearing.
14. As set out in our reasons, the claimant was allowed three days at the start of the hearing to consider the list of issues, and appears to have been in a position to question the witnesses on the question of forgery during the hearing. She did not do so.
15. In those circumstances, our reconsideration confirms our previous view that this was a new matter that should have been but was not previously raised by the claimant.

#### **4.5(a)-(c) of the list of issues**

16. In her reconsideration application the claimant says that *“the list of issues outlined in section 4.5 a-c were not taken out by me”*. She says she was asked if she wanted to take them out but *“I clearly stated that I did not”*.
17. The respondent’s reply to this includes extracts from their notes as follows:

*“J ... do you still say [4.5(a)-(c)] were caused by your protected*

*disclosures on 20 and 21 November?*

C No”

18. The claimant’s response to that is that the respondent’s notes are “*either incomplete or have been tampered with*”. However, the notes cited by the respondent are broadly in line with the notes taken by the employment judge referred to at para 33.3 of the order of 24 September 2021 and also with notes taken by the non-legal members.
19. As previously referred to in the employment judge’s provisional view, it may be arguable whether or not this amounted to a formal withdrawal, but whether or not it is a formal withdrawal the outcome is the same. By the end of the hearing it was not part of the claimant’s claim that points 4.5(a)-(c) were detriments arising from protected disclosures.

**The date of the mediation meeting**

20. We accept that the tribunal made an error in para 141 of the reasons in saying that the mediation meeting occurred on 8 March 2018. In fact it occurred on 5 March 2018 (see para 136 of our reasons). The question that follows is whether that makes any difference to our conclusions.
21. On reconsideration, we acknowledge the error in the date, but the logic in para 141 remains good, regardless of whether it the date was 5 March or 8 March 2018. The point is that the job advertisement followed shortly after the respondent had invested considerable time and energy in an ostensibly successful mediation and, as we say in our original reasons, “*in that context we do not consider it likely that the respondent was ... advertising for a replacement for the claimant*”.

**CONCLUSION**

22. Further orders will follow for the listing of a remedy hearing to determine what remedy the claimant is entitled to.
23. Finally, we note the claimant’s request in her email of 8 May 2022 for contact details for the President of the Tribunal. In case this has not been dealt with separately by tribunal staff, the President of Employment Tribunals (England and Wales) can be contacted at the President’s Support Office, 5th floor, Victory House 30-34 Kingsway, London WC2B 6EX.

Employment Judge Anstis  
20 May 2022

JUDGMENT SENT TO THE PARTIES ON

30 May 2022

FOR THE TRIBUNAL OFFICE