



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Baldwin  
**Respondent:** Cleves School

## JUDGMENT

The claimant's application dated **21 January 2021** for reconsideration of the judgment sent to the parties on **8 January 2021** is refused.

## REASONS

The full Tribunal (EJ Emery, Ms Upshall, Ms Grayson) finds there is no reasonable prospect of the original decision being varied or revoked, because

1. The application for reconsideration requests a judgment from the Tribunal on the following Issue: does C's termination amount to an act of discrimination?
2. The Tribunal considers that this issue is not one that can properly be addressed on reconsideration, for two principal reasons – (i) the issue was not adequately addressed at liability stage; (ii) the issue on which C seeks judgment can in fact more properly be dealt with as an issue of causation, to be addressed at remedy stage

The issue was not adequately addressed at liability stage

3. The issue was, at best, opaquely dealt with, in the list of issues, in evidence and in closing submissions. There is no reference to dismissal being an act of discrimination in the Issues considered comprehensively in the preliminary Hearing Order dated 31 January 2018 (pages 65-80). As the Reconsideration Request points out, this issue was added late to the list of issues.
4. It is recorded in the list of issues within the 'victimisation' section– page 96 paragraph 14:

"The claimant contends that she was subjected to victimisation as a result of undertaking protected acts. The claimant seeks to rely on the following as protected acts...

"(e) On [11] February 2015 I received an email ... the spurious allegations were not only baffling but I was shocked and appalled at the mere claim ... I was then informed that unless I tendered my resignation, a formal investigation would be launched... it was clear that these accusations came after I complained about the situation at Cleves and the discrimination I continued to face. This final ultimatum [to attend an investigation hearing], and the discrimination that I had faced prior to this, amounts to automatic unfair dismissal".

5. In other words an allegation that the claimant's dismissal is a discriminatory dismissal is 'buried' in the 'protected acts' section, one sentence in a 1.5 page recitation of protected acts/detriments, in a 13 page draft list of issues. It suggests that the email constituted the final straw, however in a detailed reconsideration of the liability evidence and submissions undertaken for the purposes of this review, this does not appear to have been addressed by the parties as an issue in evidence.
6. The Tribunal's notes record a passing reference in submissions by the claimant's representative to the issue of repudiatory breach, which we concluded was an argument based on all alleged acts of discrimination being proven. Whereas, we concluded for example that the performance concerns raised and the manner of their raising did not amount to acts of discrimination.
7. Also, there were no submissions on, for example, the effect of some of the issues raised in the claimant's letter seeking release from her contract and her letter of resignation, amounting to discrimination, and some not. Again, this did not suggest that the claimant was pursuing a claim of a discriminatory dismissal. This is not to criticise the parties; there cannot be submissions on the legal effect of partial findings in each parties' favour, because these would not be known until the judgment was reached.
8. In summary, this was not an issue which was in any way highlighted as a separate issue prior to or during the claim, submissions were in passing and did not address the issue of some but not all acts amounting to discrimination.
9. We did not feel that it was in the interests of justice to invite further submissions, which we considered would require a further hearing. In making this decision, we also took into account the 2<sup>nd</sup> reason for rejecting the request for consideration, set out below.

Not a liability issue

10. We consider that the question that is being asked by the claimant is in fact one which is more properly addressed at remedy stage, that this is in fact an issue of causation: what was the cause of the claimant's losses and damage. We consider this to be a remedy issue.
11. A significant reason for this conclusion was the following: even if we had received evidence and submissions on the issue, and we had concluded that the claimant's resignation amounted to a repudiatory breach of contract, the issue of causation for loss would still be a live issue. We considered that even if we were to answer this question in the favour of the claimant, it would not advance the issue of causation for the claimant's losses any further, as the respondent would still, no

doubt, argue that the non-discriminatory issues would be a significant factor in causation for loss.

12. One of the issues to be considered at remedy will, we consider, properly address the issue. While still to be formulated, a first draft is:
  - a. What was the material and effective cause of the claimant's loss of earnings?
  - b. Was the unlawful discrimination she suffered at work a material and effective cause of her resignation, as alleged by C, or
  - c. Did other factors, including those acts found not to amount to discrimination, cause or contribute to her resignation, and if so to what extent up to 100%, as alleged by R?
  - d. Would the claimant have been dismissed fairly/for a non-discriminatory reason in any event, if so when?
13. Issues to be considered at remedy will include the correspondence between the parties, including the reasons the claimant gave for first asking to be released from her contract on 11 February 2015 (497-500), and in her resignation letters dated 13 and 18 March 2015 (514-5 & 519).
14. For the above two reasons: it was not in the interests of justice to revisit an issue on which there was no evidence or submissions and was opaquely expressed in the list of issues; and our findings of fact give rise to complex issues of causation which are properly addressed as issues of remedy not liability; the request for consideration is refused.
15. Finally, I would like to offer my sincere apologies to the parties and their representatives for the significant delay in responding to the request for reconsideration. There were initial difficulties in my getting papers in early 2021, but the significant delay was caused by issues which meant that I was unable to work for large periods throughout 2021. This has caused significant knock-on delays, which I am now significantly addressing.

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Employment Judge **Emery**

Date 18 June 2022