



EMPLOYMENT TRIBUNALS

Claimant: Miss H Ballerino
Respondent: The Racecourse Association Limited

JUDGMENT

The claimant's application dated **10 June 2022** for reconsideration of the judgment sent to the parties on **27 May 2022** is refused.

REASONS

1. The essence of the claimant's application for reconsideration is set out in her email of 10 June 2022 as follows:

"The persistent non-disclosure by the respondent over the two year period that preceded the hearing meant that I was not aware of the need to call Andy Clifton as a witness to the tribunal ...

I feel this evidence [emails with Andy Clifton] was deliberately withheld by the respondent and in not calling Mr Clifton as a witness the respondent was acting in contravention of their duty to the tribunal to act 'in the interests of justice'.

There is also a suspicious absence of disclosure of communications between the respondent and the new employee between June-July 2019, when I believe he had already been offered (and accepted) the job encompassing my duties, making the subsequent redundancy a sham."

2. The claimant thus relies on two factors: the absence of Andy Clifton as a witness (he either should have been called as a witness by the respondent or would have been called by the claimant as a witness but for the respondent's

late disclosure) and “*a suspicious absence of disclosure of communications between the respondent and the new employee between June-July 2019*”.

3. On the first point, we do not consider that the respondent was under any duty to call Mr Clifton as a witness. It is, in general, up to a party which witnesses it calls to give evidence. Sometimes a failure to call a witness may be remarked upon by another party or something from which the other party invites the tribunal to draw an inference. If the claimant wished us to draw an inference from the respondent’s failure to call Mr Clifton as a witness she had the opportunity to do so in her closing submissions.
4. As for the question of her calling Mr Clifton as a witness, that would be unusual but a witness order provides a mechanism for this to be done. We acknowledge (and note in our judgment) that the disclosure from the respondent was very late, but if the claimant had wanted to she had an opportunity at that point to seek a witness order against Mr Clifton, but did not do so.
5. On the second point, this apparent lack of communication, and the conclusions we draw from it and the other points relied upon by the claimant are set out at paras 111-121 of our decision. This is a point we have considered and addressed in our decision. The claimant has not put forward any new point on that nor (if she had intended this as a new point) explained why it could not have been raised earlier by her.
6. On that basis I find that there is no reasonable prospect of the judgment being varied or revoked, so the claimant’s reconsideration application is refused.

Employment Judge Anstis
Date: 23 June 2022

JUDGMENT SENT TO THE PARTIES ON
27 June 2022

FOR THE TRIBUNAL OFFICE