Case No: 3318811/2019



EMPLOYMENT TRIBUNALS

Claimant: Mrs M O'Hagan

Respondent: The University for the Creative Arts

JUDGMENT

The claimant's application dated 30 March 2022 for reconsideration of the judgment sent to the parties on 17 March 2022 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

- 1. The reasons put forward by the claimant's as the basis for her application that it is necessary in the interests of justice that the judgement declared orally with reasons on 11 November 2020 one and provided in writing as above may be summarised as follows:
 - a. There was insufficient time available to hear the claim;
 - b. There is a contrast between the length of time taken by the Tribunal to reach its conclusion and the length of time taken to provide written reasons;
 - c. The reasons are said to fail to demonstrate that all of the evidence was considered:
 - d. The tribunal has preferred the respondent's evidence despite the claimant providing documentary evidence to the contrary;
 - e. In taking a fragmentary approach the tribunal failed to consider the overall picture;
 - f. Mr Mitchell, counsel for the respondent was permitted to advance a new argument;

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g. The tribunal has been influenced by the status of the respondent's counsel, leadership and witnesses.

- 2. The scheduling difficulties experienced in this case are set out in paragraph 1 of the corrected reasons. The claim was able originally listed to be heard over 7 days to include remedy if appropriate. The time estimate was reduced to 6 days to cover liability only and, for reasons there explained, the hearing was concluded in 5 days. There was no complaint at the time that there had been insufficient investigation of the evidence and argument. The claimant's application does not specify any particular matters which she was unable to canvas as a result. There is no reasonable prospect of the judgment being revoked or varied as a result of this argument.
- 3. The parties concluded their submissions at 12.35 pm on Day 4 and the Tribunal deliberated for the remainder of the day. The parties had been released until 2 pm on Day 5, when oral judgement with reasons was given, with the hearing concluded at 4:20 pm. The tribunal therefore had a full day to consider evidence and argument that had been heard over the course of 3 ½ days. Full oral reasons given at the time. It is regrettable that there was a delay in written reasons being provided but it cannot be inferred from that that there was insufficient care taken to the decision-making. The time available to the tribunal was clearly sufficient. The claimant does not allege that the written the reasons departing any material respect from the reasons with which she was provided orally on the day. There is no reasonable prospect of the judgment being revoked or varied as a result of this argument.
- 4. The necessary contents of the tribunal's reasons are set out in rule 62 of the Employment Tribunal Rules of Procedure 2013. In the case of a judgement the reasons shall identify the misuse which the tribunal determined, state finding of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues." There is no duty on the Tribunal to deal with every argument presented by the parties and provided the reasons explain how the Tribunal reached the conclusion is that it did and made the findings that it made it may be unnecessary to summarise or set out in detail all of the evidence.
- 5. Although this is primarily a question for any appeal, it is not the case that the reasons only refer to those facts which support one party's case. Paragraph 8 on page 6 of the corrected reasons sets out the Tribunal's general approach to fact finding but the specific findings of fact which were the basis of our conclusions are in the subsequent paragraphs. The claimant specifically asks which are the "accounts" referred to in paragraph 8. This general statement of our approach does not refer to any specific accounts of any particular alleged events upon which we needed to make findings in the present case. This is why the sentence begins "Where it was necessary for us to resolve..."; it was not always necessary in the present case to make a decision as between two or more competing accounts as to which we preferred.
- 6. The claimant does not point to particular evidence which she says was not taken into account in which was likely to make a difference to our conclusions. There is no reasonable basis for thinking that we failed to take account of the evidence as a whole. In any event, her arguments amount to criticisms of the weight which we gave to particular evidence and therefore seeks to re-argue points which were unsuccessful at the hearing. This does not provide reasonable grounds for concluding that the judgment is likely to be varied or revoked in the interests of justice.

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7. The claimant makes particular reference to an argument raised by the respondent to the effect that she did not wish to return to work and as she put it in her application for reconsideration "was making claims to improve her bartering position". As we understand it this is a reference to paragraph 45 to 51 of the RWS where the respondent argued that the communication of the 16 October 2018 (page 374 of the hearing bundle) should not be regarded as a protected disclosure because it was sent in an attempt to extract an improved financial offer from the respondent rather than made in the public interest.

- 8. Our finding on this was first, even if this were part of her reason that would not preclude the disclosure made in the public interest (corrected reasons para.117) but secondly that the claimant's case as articulated in the agreed list of issues solely concerned matters personal to her. In other words, we did not make a finding in relation to this argument because it would not have been determinative of the issue. It is patent that refusing to allow the respondent to argue the point would not have made any difference to the outcome.
- 9. For the purposes of this application, it is clear that this was an argument raised by the respondent to counter the claimant's case that that particular communication was made by her in the reasonable belief that it was in the public interest to do so. The respondent has consistently denied that that communication was a protected disclosure and it was not an impermissible extension of that denial to cross-examine the claimant on particular phrases in the communication as the basis of the suggestion that she had a specific alternative motivation than public interest.
- 10. The tribunal made its decision entirely on the basis of the evidence admitted at the hearing and the arguments put forward by the parties or their representatives. The claimant puts forward a bald assertion that the Tribunal allowed itself to be persuaded by the status of counsel, the respondent's witnesses or the respondent's management but does not go so far as to allege apparent bias nor to put forward any instances from the hearing or details from the reasons which she suggests would lead the reasonable and informed observer to think that there was a real risk of bias. There is therefore no reasonable ground for thinking that the matters she has put forward in her application for reconsideration would cause this judgement to be varied or revoked on such a ground.

Employment ludge Coorge
Employment Judge George
Date 27 June 2022
JUDGMENT SENT TO THE PARTIES ON
29 June 2022
GDJ FOR THE TRIBUNAL OFFICE