



EMPLOYMENT TRIBUNALS

Claimant

Miss. Claire Jackson

v

Respondent

**University Hospitals of
North Midlands NHS Trust**

Heard at: Birmingham via CVP On: 27 April 2022

Before: Employment Judge Wedderspoon

Representation:

Claimant: In Person

Respondents: Mr. M. Fodder, Counsel

JUDGMENT

1. The applications for reconsideration of the judgment are refused because it is not in the interests of justice and they have no reasonable prospects of success.

REASONS

1. Both parties sought a reconsideration of the liability judgment promulgated on 22 November 2022. The Tribunal considered the applications and did not reject them at the initial consideration and instead convened a reconsideration hearing to provide the parties with an opportunity to make further oral submissions.
2. Both parties relied upon written submissions and supplemented these with oral submissions at the hearing. The claimant made her application first but was given an opportunity to respond to the respondent's arguments.

The Law

3. Pursuant to Rule 70 of the Employment Tribunal Rules of Procedure 2013 the Tribunal has a discretion to reconsider a judgment on its own initiative or on the application of the parties where it is necessary in the interests of justice to do so. On reconsideration the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
4. The process of seeking a reconsideration is set out at Rule 72. If an application for a reconsideration is not refused pursuant to Rule 72 (1) the original decision shall be reconsidered at a hearing unless the Employment

Judge considers that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

5. The scope to reconsider is a wide one. HHJ Eady QC in the case of **Outasight VB Limited v Brown (2015) ICR 11** accepted that the wording contained in the rule 70 “*necessary in the interests of justice*” allows tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially “which means having regard not only to the interests of the party seeking the review or reconsideration but also to the interest of the other party to the litigation and to the public interest requirement that there should be finality of litigation.” This point was made in the case of **Flint v Eastern Electricity Board (1975) ICR 395**.
6. In the case of **AB v Home Office (UKEAT/0362/13)** held that the mere fact that the Tribunal’s reasons could have been improved in one respect was not a sufficient reason for ordering a review. Further reconsideration is not a vehicle for challenging an Employment Tribunal’s reasons or insofar as not part of the essential reasoning upon which the decision is based.

The claimant’s application

7. The claimant applied for the Tribunal to reconsider a finding of fact. The claimant submitted that there was a significant difference between the role she performed as a hematology research nurse (band 6) and the new band 5. The two jobs were very different with a different job description and she referred the Tribunal to her evidence where she highlighted the differences included in her witness statement. She submitted that this evidence was substantially unchallenged by the respondent at the liability hearing. In the circumstances a finding should have been made in this regard that the posts were different.

The respondent’s application

8. The respondent submitted that the role of hematology research nurse and the new band 5 role were different but not critically different in a **Hogg v Dover** sense. The Tribunal had heard evidence and made its finding of fact. Further the respondent submitted on the basis of a finding that there was no breach of contract and the claimant resigned, she was not entitled to a statutory redundancy payment; the claimant had accepted the offer of Dr. Oxtoby made on 18 January 2019; that her role (band 6) was made redundant and she was served with 8 weeks’ notice.

Conclusions

9. The case law is clear that the discretion to reconsider a judgment is a wide one but it is not so wide to be a vehicle for challenging an Employment Tribunal’s reasons or insofar as not part of the essential reasoning, upon which the decision is based.

10. The claimant's application for a reconsideration hearing seeks to revoke the Tribunal's findings of fact as regards the differences she contends between the band 6 and 5 role. The Tribunal rejects the application.

11. The Tribunal has already heard evidence about this at the liability hearing and heard the parties' submissions and made its determination. It is not the purpose of a reconsideration hearing to change the findings of fact made by the Tribunal having heard all the evidence at a substantive hearing. The Tribunal concludes that it is not in the interests of justice to revisit its findings of facts and the reconsideration has no reasonable prospect of success.

12. The Tribunal having considered the respondent's reconsideration application rejects it. The respondent's application seeks to challenge the Tribunal's essential reasoning upon which the decision is based. This is not the purpose of a reconsideration hearing. It is not in the interests of justice to reconsider the judgment on this basis and it has no reasonable prospect of success.

Employment Judge Wedderspoon

15 June 2022