



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mrs S Garrod

and

Riverstone Management Limited

JUDGMENT

The Claimant's application for reconsideration of the Judgment dated 6 November 2021 is refused.

REASONS

Introduction

- 1 In determining this application, I have referred to the extensive documentation provided by both parties at the Preliminary Hearing, I have re-read my Judgment and my reasons for that Judgment and I have read the Claimant's application. I have not received any response to the application from the Respondent.
- 2 For the avoidance of doubt I did not receive the Claimant's application, dated 24 December 2021, at that time. I was provided with the 28 page application on 6 May 2022. I have considered and decided the application as promptly as possible.
- 3 By way of background, I heard a Preliminary Hearing in this case on 28 May, 3 & 5 August 2021. Following that hearing, I produced a Judgment and Reasons for that Judgment dated 6 November 2021. My Judgment decided that:
 - 3.1 The Respondent's application in its letter dated 14 October 2020, that the paragraphs within the Claimant's ET1 which refer to without prejudice matters be removed, succeeded.
 - 3.2 The meeting which took place on 8 November 2019 was covered by the principle of without prejudice. Consequently, all references to the without prejudice content of that meeting were to be removed from the pleadings and evidence in the case.

The Application

- 4 Under Rule 70 of the Tribunal Rules (ETs (Constitution & Rules of Procedure) Regs 2013, Sch 1), the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.
- 5 Pursuant to Rule 71 an application for reconsideration shall be presented in writing within 14 days of the date on which the written record of the original decision was sent to the parties. Whilst I did not receive the application until recently, I am entirely satisfied this application should be treated as having been presented in time.
- 6 Rule 72 provides that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Overall I see no reasonable prospect of the judgment being varied or revoked in this case, on the basis of the interests of justice.
- 7 Whilst the Claimant requests that consideration of her application be carried out by the Regional Judge or another Judge rather than myself, Rule 72 of the Employment Tribunals (Constitution & Rules of Procedure) Regs 2013, Sch 1 notes that where practicable the consideration of any application shall be by the Employment Judge who made the original decision.
- 8 Having considered the documents set out in paragraph 1 above, the conclusions reached in the Judgment have no realistic prospect of being changed on reconsideration. This is for the following reasons:
 - 8.1 The Claimant's application is lengthy, raises multiple issues and provides comments and rebuttals on a large number of the paragraphs contained in the Reasons for the Judgment. I have considered the application in its entirety. I note and understand that the Claimant entirely disagrees with my Judgment, my findings of fact and application of the relevant caselaw. However I am not satisfied that the points of disagreement set out by the Claimant raise a reasonable prospect of the Judgment being varied or revoked, on the basis of the interests of justice.
 - 8.2 The Reasons for the Judgment set out my findings and the reasons for those findings and conclusions. If this matter is examined on appeal, it will be for the higher tribunal to say whether those reasons and the Judgment can stand. All suggestions of my having erred in law are a matter for appeal.
 - 8.3 The Tribunal gave appropriate directions and the parties had adequate opportunity to provide to the Tribunal all relevant evidence for consideration of the preliminary matters at the hearing on 28 May, 3 and 5 August 2021.

- 8.4 The Claimant raises various matters about my behaviour and impartiality. I detail some further relevant information in the following paragraphs but beyond this, I note that the Claimant's description of these points in her application is incorrect.
- 8.5 Under her heading '*Significant Risk of Bias*' the Claimant references the fact that I had '*previously worked with the Respondent's representative in a professional capacity*'. At the start of the hearing, I made it known to all parties that I had been in the same barristers' chambers with Mr Panesar QC for a short period of time approximately 10 years ago. I told the parties that whilst we had been members of the same chambers, we had never worked together and had not spoken since that time. I identified this matter to the Claimant at the start of the hearing in order to provide her with a full opportunity to raise any objections to my hearing the Preliminary Hearing. The Claimant confirmed that she had '*no issue*' with this and that she was content for me to proceed to hear the case.
- 8.6 Under her heading '*(3) Standard of evidence imposed on the Claimant*' the Claimant references reasonable adjustments and the failure to consider an adjournment. On 28 May 2021 the Claimant was asked whether she was fit to continue with the hearing and she confirmed that she was and that she wanted the hearing to proceed. At no stage did the Claimant ask for an adjournment.
- 8.7 At the commencement of the afternoon session on the first day, which followed my preliminary reading and was prior to evidence being heard, the Claimant was told that she could ask for breaks during the hearing whenever she wished. Following this, the Claimant cross-examined the Respondent's witness as follows:
- (i) from 1.59 p.m. – 2.08 pm;
 - (ii) from 2.30 pm – 4.10 pm (during this session the Claimant was offered a break but refused);
 - (iii) from 4.34pm until approximately 5.00pm.
- 8.8 A Case Management Order dated 29 May 2021 set out the agreed further hearing dates of 3 and 5 August 2021 and, again as agreed by the parties, a timetable providing a further 1 hour of time for the Claimant's remaining cross-examination of the Respondent's witness, 3 hours for Mr Panesar QC to question the Claimant and her witness and then for the parties to make any closing submissions.
- 8.9 At the start of the resumed hearing on 3 August 2021 the Claimant stated that she required 2 further hours for cross-examination and 30 minutes for her closing submissions. Following this the Claimant cross-examined the Respondent's witness as follows:

- (i) from 10.15 am - 11.03 am (during this session, at 10.40am, the Claimant was offered a break but she responded, '*No, I am ok*').);
- (ii) from 11.15am – 11.51am at which point she told me she was halfway through her questions;
- (iii) from 11.51am – 1.05 pm;
- (iv) from 2.02pm – 2.15pm.

Following this, the Claimant said that she wished to thank everyone at the hearing for their patience with her whilst she asked questions and she also thanked everyone for '*not getting frustrated*' with her.

8.10 The Claimant was asked questions by Mr Panesar from 2.23pm. The Claimant was told that there would be a break at around 3pm but that she could request a break sooner if she required one. The Claimant answered questions from 2.23pm – 3.15pm and from 3.33pm – 4.42pm.

8.11 On 5 August 2021 Dr Garrod gave evidence to the Tribunal. The Claimant informed the Tribunal at this stage that there was no-one else in her house to look after her sleeping baby and her 3 year old child. The Claimant wished to continue with the hearing and said to the Tribunal, '*I am ok not to hear the evidence*'. The Tribunal did not accept that this was appropriate. Following further discussions with the parties, the Claimant confirmed that she was able to sit in a different room to that being used by her husband and follow the hearing on a computer in that room, wearing earphones to ensure she could hear and follow the evidence given by her husband. The Claimant confirmed that she thought this was '*a good idea*' and she expressly agreed to notify the Tribunal straightaway if at any point she was unable to fully follow the proceedings. This was the process in place from 11.10 am until 12.50 pm on the third day. During this time from 12.41 pm to 12.50 pm, the Claimant asked questions in re-examination.

11 Again, I note the Claimant's strong belief that my decision on the preliminary issue is wrong but I refuse her application as it discloses no proper grounds for a reconsideration and, accordingly, there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Harrington
Date: 7 June 2022

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