Case Numbers: 3200168/2020
3200172/2020

EMPLOYMENT TRIBUNALS

Claimants: **Miss D Gray**
Mrs K Smith

Respondent: **Rise Park Academy Trust**

JUDGMENT FOLLOWING RECONSIDERATION

Mrs Smith's application dated 14 August 2021 for reconsideration of the judgment sent to the parties on **2 August 2021** is refused.

REASONS

1. On 14 August 2021 Mrs Smith wrote a detailed letter to the Tribunal in respect the Tribunal's Judgment which had been sent to the parties on 2 August 2021. Unfortunately, the letter arrived during a period when I was absent on leave and due to other pressures on judicial and administrative time and resources I did not have an opportunity to properly consider it on my return. I sincerely apologise for the delay in considering the application.

2. I have now had the opportunity to consider the matters set out in Mrs Smith's letter I have treated the letter as a reconsideration request. Having carefully considered the points raised by Mrs Smith I have come to the conclusion that it is not necessary to reconsider the judgment in the interests of justice because none of the matters raised by Mrs Smith are such that they would give any reasonable prospect of original decision being varied or revoked. Accordingly the application for a reconsideration is refused under rules 70 and 72.

3. Rules 70 to 73 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of Tribunal Judgments as follows:

> ***"Principles***
> ***70***
> A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment 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.

Application
71
Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process
72
(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

4. In **Outasight VB Ltd v Brown UKEAT/0253/14 t**he EAT held that the Rule 70 ground for reconsidering Judgments, (the interests of justice) did not represent a broadening of discretion from the provisions of Rule 34 contained in the replaced 2004 rules, (at paragraphs 46 to 48). HHJ Eady QC explained that the previous specified categories under the old rules were but examples of where it would be in the interests of justice to reconsider. The 2014 rules remove the unnecessary specified grounds leaving only what was in truth always the fundamental consideration, the interests of justice. This means that decisions under the old rules remain pertinent under the new rules.

5. The key point taken from the relevant authorities is that it must be in the interests of justice to reconsider a Judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing or a mistake as to the law. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue their case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue her case, to have, "a second bite at the cherry", (per Phillips J in **Flint v Eastern Electricity Board [1975] IRLR 277**).

6. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor** [2016] EWCA Civ 714 in July 2016 where Elias LJ said that:

> "the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (**Flint v Eastern Electricity Board [**1975] ICR 395) which militates against the discretion being exercised too readily; and **in Lindsay v Ironsides Ray and Vials** [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

7. Similarly, in **Liddington v 2Gether NHS Foundation Trust** EAT/0002/16 the EAT chaired by Simler P said in paragraph 34 that:

> "a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

8. In her application the Claimant seeks to reargue the case on the facts. Her application for reconsideration amounts to detailed submissions on key points on the evidence and the issues, asking the tribunal to take a different view to that taken in the original deliberations. The Claimant's application appears to be an invitation for the Tribunal to revisit the evidence and come to different conclusions; she does not refer to any evidence that could not have been deployed at the original hearing.

9. I consider that the application amounts to a request that the tribunal allow the Claimant to re-argue her case. The interests of justice are that there be finality in litigation, absent any good reason for a decision to be reconsidered. That a party does not like the conclusions reached by a tribunal and would like a second chance to present their arguments and to contest the evidence, is not such a reason. That is what is referred to in **Liddington** as having a second bite of the cherry. As the Tribunal has considered all of the evidence and listened carefully to the arguments of the parties the principle of finality means that I should decline to do so for a second time.

10. On the basis of the application submitted, there is therefore no reasonable prospect of the decision of the tribunal being revoked or varied and for that reason, the application for a reconsideration is refused and I dismiss it without a hearing

Employment Judge C Lewis
Dated: 5 July 2022