



EMPLOYMENT TRIBUNALS

Claimant: Miss K Rai

Respondent: The Christie Hospital Foundation Trust

JUDGMENT

The claimant's application dated 23 June 2022 for reconsideration of the judgment sent to the parties on 9 June 2022 ("Judgment") is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the Judgment dismissing her claims as they were presented outside of the statutory time limits.
2. The grounds for the application are in an email dated 23 June 2022 and the following attachments:-
 - 1.1 letter from the claimant dated 23 June 2022 (7 pages) ("Reconsideration Letter").
 - 1.2 email from claimant to Tribunal office dated 17 June 2022.
 - 1.3 a document called call recording transcripts ("Transcripts").
 - 1.4 A report by a consultant psychological therapist dated 14 April 2021 ("Report").

The Law

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
4. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
5. 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."

6. 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."

7. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

8. The reconsideration application can be broadly divided into 3:-

8.1 Claimed inaccuracies in the judgment. In the Reconsideration Letter the claimant says that there are significant inaccuracies in the judgment particularly in relation to whether the claimant was in any way informed of ACAS in her discussions with the Tribunal office.

8.2 New evidence. The claimant has provided new evidence in the form of the Report and the Transcripts.

8.3 I should reconsider my findings in relation to the most recent allegation of unlawful discrimination made in the claim form.

I set out below my comment and decision on each of these:-

Inaccuracies in the Judgment

9. In the claimant's email of 17 June 2022 and her reconsideration letter (page 2) the claimant says that the Judgment (particularly paragraphs 31b and 31c) does not accurately record the claimant's evidence about her discussions with the Tribunal office, specifically whether ACAS was ever mentioned in those discussions. The claimant provides what she says is a corrected summary of her evidence on this point referring to paragraphs 31b and 31c of the judgment. The claimant says that corrected, accurate wording of these paragraphs is as follows:-

Paragraph 31 b *"This should read - The Claimant accepts that she was **not** told about the role of ACAS by the Tribunal staff. Her version of events is that*

*she was **not** told there was room for resolution through the early conciliation process and states the response of the Trust was not to engage.”*

Paragraph 31c – *“This should read - On 1st December 2020 the Claimant contacted the Tribunal Office again. At that stage they clarified with the claimant that the correct form was the ET1 form. The Tribunal staff **did not** provide details of the ACAS process.”*

10. I have considered again the terms of these paragraphs in the judgment and reviewed my own notes of the claimant’s evidence. I am satisfied that the terms of paragraphs 31b and 31c of the Judgment accurately summarise the claimant’s evidence. I am satisfied that, in her evidence, the claimant did refer to having been told about ACAS in her discussions with the Tribunal office that took place before she presented her ET1 claim form.

New Evidence

(1) The Report

11. The claimant provided medical evidence for the preliminary hearing which was included in the bundle of documents and considered by me when reaching my decision about the time limit issues. This medical evidence did not include the Report.

12. The claimant could have provided the Report for consideration at the hearing. In the reconsideration letter she explains that she did not do so due to the sensitivity and nature of the content.

13. Much of the Report records what the claimant reported and what she believed. It also includes a section which reports on the results/outcomes of 3 psychometrics which showed severe depression, anxiety and post trauma distress.

14. Whilst I did not have the opportunity to read and consider the Report at the preliminary hearing, I was made aware of the existence of a psychiatrist report dated 23 March 2021 (it is not clear whether this is the Report. It may be, although the date is different) and that a private consultant psychiatrist had diagnosed her with Post traumatic stress disorder.

15. I accept, on the basis of the evidence provided, that the claimant’s mental health was poor in late 2020 and early 2021. As noted at paragraph 43 of the Judgment, I do not accept that the claimant’s mental health prevented her from understanding the requirement to first contact ACAS through the early conciliation process. A consideration of the Report at the preliminary hearing would not have changed the outcome.

(2) The Transcripts

16. This new evidence could not have been before the Tribunal at the Preliminary Hearing as it did not exist. It appears that the claimant, having received the Judgment, contacted the Tribunal office on 2 occasions (14 June 2022 and 22 June 2022) possibly under an alias but in any event indicating to a member of the Tribunal staff that she wanted to issue a claim against her former employer.

17. On 14 June 2022, according to the Transcript, the claimant told the Tribunal staff member that she was a whistle blower who had been racially abused, that she had tried various routes internally and externally to address her concerns with her former employer; that she was “on-line” at the time of the call and submitting an ET1 form. She wanted to know if that was the right process. The response from the Tribunal staff member was *“yes, yes if you are submitting an ET1 form then yeah.”*

18. On 22 June 2022 the claimant called again, stating she was a whistle blower who had been pushed out of her job and as a result she had been bullied and victimised. She told the tribunal staff member that she had tried to resolve internally, that there was an independent inquiry and that she wanted to know whether to submit the claim form now or await the outcome of the inquiry. The Tribunal Staff member told the claimant that they could not provide her with any advice on that matter. The claimant then asked the Tribunal staff member what the process was for taking the matter to the Tribunal and was told she needed to fill in a form online. Later in the conversation the claimant said *“ok fine the fact that the trust not willing to talk to me to negotiate or resolve this is doing the ET1 form the only route now for me?”* and the Tribunal staff member replied *“I don’t know, I couldn’t give you any advice on that, all I can advise is that you can put in a claim to the Tribunal.”*

19. The Transcripts are not relevant. They are evidence of different discussions, Clear findings of fact were made by me as detailed at paragraphs 31b and 31 c of the judgment. I found that the claimant had been told about ACAS prior to issuing her claim. My findings are based on evidence that the claimant provided.

20. On this point, I also refer to paragraph 33 of the Judgment; and my reference to the wording at part 2.3 of the ET1 claim form.

(3) Date of most recent allegation of unlawful discrimination

21. At paragraph 14 of the Reconsideration Letter the claimant states that the most recent discriminatory act was 27 October 2020. This is different to the claimant’s account in her letter dated 19 March 2022 when she asserted that the latest discriminatory act was on 20 December 2020.

22. I considered at length both in the preliminary hearing and when reaching my reserved decision, the claim form and the various versions of the claimant’s claims. Having done so I made relevant findings which are set out at paragraphs 19 to 28 of the Judgment. I did so to the best of my ability based on the information that I had. By providing further comment at paragraphs 14-19 of the Reconsideration Letter, the claimant is attempting to reopen those findings because she does not agree with it; to reargue matters which have already been decided.

Conclusion

Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the preliminary hearing. The application for reconsideration is refused.

Case No: 2401516/21

Employment Judge Leach
DATE: 13 July 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
14 July 2022

FOR THE TRIBUNAL OFFICE