



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Sawyers

Respondent: East Suffolk and North Essex NHS Foundation Trust

JUDGMENT

The Claimant's applications dated 11 April 2022 and 19 April 2022 for reconsideration of the judgment sent to the parties on 25 March 2022 is refused.

REASONS

1. The Claimant made a timeous application for a reconsideration under Rule 71 of the Employment Tribunal Rules of Procedure 2013 by her attachments to emails sent on 11 April 2022 and 19 April 2022.

2. In the 11 April 2022 document, the Claimant asks that I review what she describes as inaccurate records and/or errors. I have considered these in detail and conclude that any errors are not material to the decisions reached and that it is not necessary to reconsider the Judgment in the interests of justice.

- Paragraph 1 of the application: the finding at paragraph 26 is that the Claimant did not state in her Datix complaint that Ms Lynn was an employee of the Respondent but Ms Gordon-Clement contacted HR because she knew that another staff member had been involved. However, the Tribunal concluded at paragraph 81 that it was not clear to her that this was an issue between members of staff within their grievance or disciplinary policy. The Claimant may disagree with the conclusion that there was confusion but there is no material error to be corrected.
- Paragraph 2: the Tribunal made findings of fact at paragraph 28 that there were differences but none were material to the issues in the case for the reasons given. The Claimant disagrees and asks in her application for further findings and an adverse inference to be drawn. The application is an attempt to re-argue points which were part of her case before the Tribunal at the hearing and were not accepted.

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- Paragraphs 3 & 4: whether or not Ms Eves had previously been a locum sonographer, this was her first managerial job. Nor is it material whether the Claimant also submitted her complaint to Ms Smith. There is no material error which renders it in the interest of justice to reconsider the Judgment.
- Paragraphs 5, 10, 12 and 17: even if the Claimant is correct, nothing turns on the dates, whether it was the day or the night before or whether the student was assigned to the Claimant or to Ms Moroney.
- Paragraph 6: the Tribunal found at paragraph 29 that Ms Porter and Ms Macey were in communication. The fact that on 25 June 2019 Ms Porter said that she had read the Datix complaint “some time ago” does not render unsafe our inference that she had not read it by 31 May 2019.
- Paragraph 7: whether the Datix complaint was closed on 3 June 2019 or 6 June 2019, the material finding remains the same – it was closed for an incorrect reason.
- Paragraphs 8, 9, 11 and 13: the proposed findings of fact do not affect the Judgment. The Tribunal does not make findings of fact on every piece of evidence put before it, only those required to decide the issues.
- Paragraphs 14 and 16: the Reasons are fully set out. Further clarification is not required and/or reconsideration is not a method for the Claimant to ask further questions about the evidence or process which were dealt with during the hearing.
- Paragraph 15: the Claimant is correct that it is 17% BAME for the entire Trust and not the Ultrasound Department. The Tribunal did not draw an inference based upon the statistic but rejected the race claim on the reasons given in the conclusions, based upon the particular facts of the Claimant’s case.
- Paragraphs 18 to 36: the Tribunal considered the reason for the decision to refer her to the HCPC in respect of a fitness to practice concern at paragraphs 94 and 96 of our conclusions. The Claimant’s application is an attempt to re-argue parts of her case which were not accepted by the Tribunal. Insofar as the Claimant states that but for the mishandling of the grievance, she would not have been absent from work with the Respondent and the basis for the referral would not have arisen, a harassment and/or victimisation claim is not based on a “but for” causation test. Nor is unreasonableness sufficient to infer discrimination, harassment or victimisation.
- Paragraphs 37 to 39: this is an attempt further to argue points already fully considered by the Tribunal following the Claimant’s submissions about credibility.
- Paragraphs 40 to 51: the Tribunal has set out at paragraphs 6 to 8 of the Reasons the circumstances in which the constructive dismissal claim and resignation related Equality Act claims were withdrawn. The Claimant may now have changed her mind, but her decision is binding and it is not

in the interests of justice to permit her to rescind her withdrawal and re-open that part of the case.

3. In her original document and again in her 19 April 2022 document, the Claimant relies upon a number of authorities which she asks to be considered. These relate to the resignation related claims. As set out above, the Tribunal agreed that the claims were pleaded and that we were minded to allow her to make the complaints, in other words to amend the list of issues. The question was then how to proceed given that the case had not been prepared on that basis. The Claimant was given time to consider her position and a full explanation of the implications of her decision.

4. In her document sent on 19 April 2022, the Claimant seeks to re-open by way of further submissions her case on discrimination and/or harassment in relation to the incident on 25 March 2019 and the handling of the grievance. The Tribunal has made its findings of fact and drawn conclusions based upon them, disagreement with them is not a valid ground for reconsideration. Further, the Claimant succeeded in her harassment related to age claim in respect of the poor management of the grievance process and comments made by Ms Macey on 29 July 2019.

5. The remainder of the document purports to deal with “other matters in relation to poor grievance handling” and is essentially the Claimant making a series of further points in support of her case which she either did, or could, have made at the hearing. There are important public policy reasons for the rule of finality in litigation and reconsideration is not an opportunity to improve upon original submissions and/or to expand upon the same once the case has concluded. Nor is it an opportunity to continue to press the extent to which a Claimant feels that they have been treated unfairly by a Respondent. There is nothing in the Claimant’s additional points which require the Judgment to be reconsidered.

6. Having considered, therefore, the content of each document presented in support of the application for reconsideration, I conclude that none of the matters raised by the Claimant 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.

Employment Judge **Russell**

Date: 27 September 2022