



# EMPLOYMENT TRIBUNALS

**Claimant**  
Mr K Coyle

**Respondent**  
v The Royal Marsden NHS Foundation Trust

## JUDGMENT ON FURTHER RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider further the decision to refuse his claim for Interim Relief, the application to reconsider is refused under Rule 72(1) as there is no reasonable prospect of the decision being varied or revoked.

## REASONS

### Introduction

1. The Claimant worked as a Kitchen Porter for the Respondent, between February 2012 and July 2022. His application for Interim Relief (IR) was refused at a public hearing on 24 August 2022 and his application for reconsideration ("First Reconsideration") was refused under Rule 72(1) on 17 September 2022 as there was no reasonable prospect of the decision being varied or revoked. These reasons should be read in conjunction with the First Reconsideration reasons to provide the background to the application and First Reconsideration.

### Application for Further Reconsideration

2. Following the IR hearing, the Claimant has emailed the Tribunal on a large number of occasions. It does not appear that all of his emails were referred to me before the First Reconsideration judgment was issued. The emails that had been referred were as follows:

Date	Time	Contents
25/08/22	11.07	Medical certificate and email exchanges
	11.09	Roster photograph and emails
	16.07	Notifying intention to request reconsideration

28/08/22	18.48	Roster photograph and emails. Document* called "submissions" (in fact, further emails)
29/08/22	19.35	Emails
08/09/22	11.34	Emails
	11.36	Medical certificate/emails
	11.38	Roster/emails
	11.51	"Final submissions" (same item as * above)
	13.54	Emails re Trade Union activities

- At 20.28 on 8 September, the Respondent emailed to say that it had been copied in to ten emails from the Claimant. The Tribunal emailed the Claimant on 8 September to say he was not to send in anything further<sup>1</sup>. On 15 September at 13.34, the Claimant emailed the Tribunal chasing the response to the application for reconsideration. The refusal was promulgated to the parties on 17 September.
- On 21 September, the Claimant sent further emails to the Tribunal at 10.19, 10.21, 10.22 and 13.28. These comprised forwarded versions of emails as follows:

07/09/22	20.00~	24-page "revised reconsideration" email 132 pages - minutes and documents 12 pages dismissal/appeal minutes 6 pages personal statement
	20.12	23 pages emails 11 pages emails 9 pages emails
	20.07	13 pages medical documents and emails

The email at 13.28 was a repeat of the 20.00 email of 7 September 2022 (item marked ~ above). On 22 September 2022 at 10.25 the Claimant sent the same email again.

- I have also learned that on 5 September 2022 the Claimant emailed the Tribunal at 10.40 to say that he intended to submit documents for reconsideration. It is therefore unclear which ten emails the Respondent had seen by 8 September, but in light of my decision below I did not consider it necessary in the interests of justice to make further enquiries.

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<sup>1</sup> The Claimant denies receiving this email

## Rules

6. The relevant Rules for this application read as follows:

### *RECONSIDERATION OF JUDGMENTS*

#### 70. Principles

*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.*

#### 71. Application

*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.*

#### 72. Process

- (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.*
6. As with the First Reconsideration, this means that the task before the Tribunal is to consider whether reconsideration of the decision is in the interests of justice. If there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.
7. Since at the time of the First Reconsideration, the Claimant’s documents were not all before me, I have decided to re-make the decision. I have been careful to avoid “confirmation bias” when conducting this further reconsideration.

## Conclusions

8. The Claimant’s 24-page “revised reconsideration” document says (in summary) at the beginning that he will show that the allegations against him were false and hence could not have been the reason for his dismissal. He

says he will show a causal link between protected disclosures he made and his dismissal. The document comprises discussion/copies of the following, in broad terms, on the following page numbers:

- 1-8 the Claimant's absence on 3 February 2022 and whether it should have been discounted as misconduct because it was booked as annual leave;
  - 8-10 deductions from the Claimant's pay;
  - 10 the Claimant's assertion that the proceedings against him were a sham;
  - 11-12 the Claimant's representation of a colleague;
  - 13-14 previous protected disclosures the Claimant says he made;
  - 15 the fact that the Claimant is "not begging for interim relief" but wants me to look at the evidence;
  - 16 a list of personnel involved;
  - 17-24 emails from 2018 and 2022.
9. It is notable that in this document and in the nine pages of emails forwarded on 7 September 2022 at 20.12, the Claimant still appears to be relying on the fact that he was a TU representative and arguing that this led to his dismissal. I have already explained that in the absence of a certificate in line with section 161 TULR(C)A 1992, the Tribunal does not have jurisdiction to hear an interim relief application on these grounds. Further, this dilutes the Claimant's contention that the reason or principal reason for his dismissal was his protected disclosures.
10. Much, if not all of the documents on which the Claimant relies were either in the bundles at the IR hearing or had been sent in by the Claimant in advance of the hearing and therefore had been seen by me. The Claimant is again asking me to reach a different decision on that which I have already considered and rejected.
11. The Claimant cannot show that all of the allegations against him were false; he admits some of the conduct involved. For instance, he accepts that having been given a first written warning previously and being told that he was not permitted to sleep on the Respondent's premises (and having been reminded of that in the recent past) he once more did so in March 2022. The Respondent, on the face of it, found this to be gross misconduct.
12. The Claimant argues that the first time he did this, it was because the Respondent had made unlawful deductions from his salary so that he was homeless, and he says that was the same in February 2022, after which he was given the reminder. Following that reminder however, he says the reason he slept at work in March 2022 was that he had sent a large sum of money to his sister to assist in the care for his terminally ill father. Clearly there is no criticism of this altruism intended, but he admits that in circumstances where he attaches no blame to the Respondent, he nonetheless slept on work premises and he also admits that he knew he was expressly not permitted to do so.

13. Secondly, the Claimant does not deny sending the emails that were found to constitute misconduct on his part and nor does he deny being absent on 3 February 2022, although he says in relation to the former that this arose from a period of heavy drinking and in relation to the latter (which the Respondent also found to be gross misconduct) that he was legitimately absent because he was on approved annual leave on that date. He has drawn the Tribunal's attention to the number of times when he made this point in the investigation and subsequent internal hearings. However, such repeated assertions by the Claimant shed no light on the Respondent's true reason for dismissal.
14. In any event as I explained at the IR hearing, these issues will be for the Tribunal to consider more fully in relation to the claims. I am not deciding as part of this application whether the Claimant's absence on 3 February was authorised or not, and whether, if the latter, it was reasonable to dismiss him for that and his other conduct, but only whether it is likely to be found at a full Hearing that the reason for his dismissal was that he had made protected disclosure(s).
15. As the matter stands, taking into account the hundreds of pages that I have been asked to consider, I conclude that the Claimant does not have a "pretty good chance" of showing that the reason for his dismissal was a protected disclosure, or more than one. He has not shown, and clearly cannot show, that all the allegations against him are wholly false, although I accept that he may have an explanation for his conduct and once it has been put into context, he will be entitled to make the argument that the Respondent's reaction was unfair in all the circumstances or indeed that the Respondent did not have a genuine and reasonable belief in the misconduct alleged. He may succeed in his argument that it was because of his protected disclosure(s) and/or TU activities.
16. At a full Hearing, it will fall to the Respondent to show the reason for dismissal and that it was a potentially fair one. In an interim relief hearing, the burden is on the Claimant to show it is likely to be found at trial that his dismissal was for a specific, impermissible, reason. He has not so shown. In the circumstances, the application is refused as there is no reasonable prospect of the decision being varied or revoked.

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Employment Judge Norris  
Date: 25 September 2022  
JUDGMENT SENT TO THE PARTIES ON

..26/09/2022

FOR THE TRIBUNAL OFFICE