



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N Leeks

**Respondent:** University College London Hospitals NHS Foundation Trust

## JUDGMENT

The Claimant's application dated 13 September 2022 for reconsideration of the judgment sent to the parties on 30 August 2022 is refused.

## REASONS

- 1 There is no reasonable prospect of the original decision being varied or revoked.
- 2 The relevant parts of Rules 70, 71 and 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide as follows.

### *RECONSIDERATION OF JUDGMENTS*

#### **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

**Case Numbers 2200214/2018  
and 2200278/18**

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.

- 3 The Respondent argues that the Claimant's application is out of time but the email I have seen from the Claimant to the Tribunal was timed at 23.59 on 13 September 2022, so it appears to me to be in time, and I have addressed it.
- 4 The Claimant raises a few reasons for her reconsideration application.
- 5 First, the Claimant appears to object to the Tribunal having listed the hearing to consider the Respondent's application for strike out. The Respondent was entitled to apply for a strike out and it was entirely within the case management powers of the Tribunal to hear it at a hearing at which the Claimant was given a full opportunity to argue her case.
- 6 Secondly, the Claimant argues that the burden of proof (in relation to the argument that the Claimant was no longer actively pursuing her case) was unjustly and unreasonably imposed on the Claimant. That is incorrect. As the judgement makes clear there were two grounds pursued by the Respondent primarily. Both were considered and both found to be a proper basis for a striking out.
- 7 The first ground was that the Claimant had not actively pursued the case. Rule 37 is expressed in terms which are such that it is immaterial whether the Claimant wished to pursue the case. The question was whether she had in fact failed actively to pursue it. That is a question of assessing the facts. The burden of proof was not imposed on the Claimant. I considered that on the facts as the Claimant described them, she had not done so. There is nothing in her reconsideration application which could alter that conclusion.
- 8 Thirdly, the Claimant argues that the Tribunal was not able to make a finding of facts on whether the Claimant had ever contacted the Tribunal - London Central ET during what she refers to as the lockdown period, to make listing date enquiries. While I made it clear that that I had difficulty with the explanation given by the Claimant about her calls, I still considered the position on the basis that the Claimant did make the calls which she had described. However, those calls were not in my view, sufficient to meet the requirement for actively pursuing the claim. Other than those calls, the Claimant did not at the hearing, or now, suggest she took any other steps.
- 9 Fourthly, the Claimant argues that I cannot have made a finding of fact as set out in paragraphs 17 and 18 of the Judgement. Those paragraphs reference the Respondent having drawn my attention to a number of other ET judgements on the public register in which the Claimant was involved. I made no finding other than to say I had checked that they were in fact judgments on the register. They did not form part of the basis for my decision and as noted in relation to the Claimant's submissions at the time, I understood that the Respondent raised them solely to point out if the Claimant argued it, which she did not to any great extent, that the Claimant was well enough to have engaged in the conduct of this case as she did engage with other cases over the relevant period. I referred to them for the sake of completeness so that the parties knew what I had done.

**Case Numbers 2200214/2018  
and 2200278/18**

- 10 There was also a second ground for the application for strike out, raised by the Respondent, which I accepted and considered extremely important, which was that a fair trial was no longer possible in the light of certain Respondent witnesses no longer being available. The Claimant does not make any argument about that. That was critical, in the light of the previous decision by the Tribunal in October 2019, and the importance of a fair hearing being possible, identified in the case law.
- 11 Had the Respondent not relied on the Claimant's failure actively to pursue the case, the loss of key witnesses after this length of time would still have been a proper basis for striking out the claim. In the circumstances the inability to have a fair hearing remains a proper basis for striking out.
- 12 In addition to the application for reconsideration of the strike out, the Claimant in her application refers to the refusal to grant the Claimant's application for a wasted costs order and says that was an error of law. The Claimant did not seek written reasons for that decision and has not explained why she considers I erred in law in refusing to grant her wasted costs application. I cannot reconsider the matter in the absence of an explanation as to what error there was. In all the circumstances the Claimant's application has no reasonable prospect of being varied or revoked and is refused.

Employment Judge N Walker

Date 27 September 2022

JUDGMENT SENT TO THE PARTIES ON

27/09/2022

FOR THE TRIBUNAL OFFICE