



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Nkechi Leeks

**Respondents:** 1) King's College London Hospital NHS Foundation Trust  
2) Ms P Barnett  
3) Mr D Paterson  
4) Mr G Knowles  
5) Mr J MacLeod

## JUDGMENT

- 1) The Claimant's application for reconsideration of the Reserved Judgment & Reasons dated 14 December 2021 and sent to the parties on 19 January 2022 is refused;
- 2) The Claimant's application under Rule 50 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 is refused.

## REASONS

### Reconsideration

1. On 2 February 2022, the claimant sent an application for reconsideration and a separate document containing additional reasons for reconsideration of the Reserved Judgment & Reasons which was sent to the parties on 19 January 2022 to the Tribunal and to the Respondents' solicitors.
2. The first document consists of 15 pages, the second consists of 22 pages. She has also attached 6 pdf files of documents and a pdf bundle of 32 pages. These documents were not referenced in her application or additional reasons. Some of them are additional documents to those that were before the Tribunal at the hearing.
3. I am not aware of any reply being received from the Respondents' solicitors.
4. I would apologise most sincerely to the Claimant in particular and to the Respondents for the delay in dealing with the Claimant's application. However, I am aware that the Claimant has also appealed the Reserved Judgment & Reasons and that matter is awaiting process by the Employment Appeal Tribunal.

## The Tribunal Rules on Reconsideration

5. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

*“(Rule) 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.*

...

*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.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.”*

6. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:
- a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted.
  - b) 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.
  - c) It is not a means by which to have a second bite at the cherry, or is it 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.
  - d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

## Conclusions

7. Having regard to the circumstances, I have determined that a hearing is not necessary in the interests of justice. The Claimant's application and additional reasons are detailed and the Respondents have not responded.
8. The Tribunal heard evidence over the course of 15 days and then received written submissions which were considered over 4 days in chambers before reaching its decision. The Tribunal heard evidence from the Claimant and from seven witnesses on behalf of the Respondents.

9. Broadly, the Claimant's application challenges the Tribunal's findings on the basis that she simply does not agree with them or with the decision reached. Whilst she has introduced some further evidence which was not raised at the hearing, no explanation has been given as to why it was not adduced over the 15 days of evidence or in her written submissions. Her grounds do not disclose any error of law including perversity notwithstanding her assertions.
10. Whilst the Claimant also asserts that the list of issues was not agreed and that there were procedural irregularities, this is not the case and again are not matters that she raised over 15 days of evidence or in her written submissions.
11. Her additional reasons for reconsideration simply recites the particulars of her claim and disagrees with the Respondent's evidence, sets out submissions in response to what she, in contradiction to her application document, describes as the "agreed list of issues," and then sets out submissions in response to Mr Paterson's evidence and the Respondents' submissions. In as far as these go further than was raised during the hearing, no explanation is given as to why they were not raised at that time.
12. Having considered the Claimant's application and additional reasons, in the circumstances, there is no reasonable prospect of the original decision being varied or revoked and the application is refused.

## **Rule 50**

13. At paragraph 36 of her application for a reconsideration, the Claimant makes an application under Rule 50 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for anonymisation and alternatively for a restricted reporting order ("RRO"). Limited reasons for the application are set out. I would again apologise most sincerely for the delay in the Tribunal dealing with this application.
14. I am not aware of any response being received from the Respondents.
15. Rule 50 allows the Tribunal to prevent or restrict public disclosure of any aspect of proceedings so far as it necessary in the interests of justice or to protect rights under the European Convention on Human Rights ("ECHR") of any person. This involves consideration of Article 8 ECHR as to rights to privacy and balancing this against Article 6 ECHR which sets out the right to open justice and Article 10 ECHR as to the right of freedom of expression. In short, the Tribunal has the power to make suitable orders to protect privacy so far as it considers necessary in the interests of justice or to protect anyone's rights under the ECHR.
16. This gives Tribunals a great deal of flexibility in the type of order which it can make. For example, it can order that all or part of the hearing be conducted in private or that the identities of parties, witnesses or other individuals are kept anonymous during the hearing and/or in written records including documents, listing notices and the public register. This can apply for a limited period of time or permanently. However, a Tribunal has no power to keep a Judgment off the public register (except in national security cases).
17. A Tribunal can also make an RRO. This specifies that certain parties must not be publicly identified and can cover the person making the allegation or anyone affected by it. An RRO remains in force (unless revoked earlier) only until the final decision is promulgated. It can also be made permanent where necessary to protect ECHR rights.

**Case Nos: 2302989/2017, 2300701/2018 & 2300721/2018**

18. Case-law in recent years has placed a very strong emphasis on the importance of “open justice”. It is a general principle of UK constitutional law that justice is administered in public. The starting point is therefore that the principle of open justice is of paramount importance and departing from that can only be justified when it is strictly necessary to secure the proper administration of justice.
19. I have considered the following factors:
  - a. This is not a matter that the Claimant raised during a lengthy public hearing over 15 days;
  - b. The Claimant was aware of the existence of Rule 50 from at least 31 July 2018 at the hearing conducted by Employment Judge Crosfill but has only raised the matter in February 2022. I note in particular paragraphs 2 to 8 of the record of that hearing (at pages 138-139 of the hearing bundle);
  - c. In as far as the case involved evidence of a personal nature, including that relating to the Claimant’s disabilities, this has already been heard at a public hearing;
  - d. The Reserved Judgment & Reasons has already been published on the Employment Tribunals online register and so is in the wider public domain;
  - e. No compelling reasons have been given as to why the Claimant’s name should be anonymised;
  - f. No compelling reasons have been given as to why an RRO should be granted as to the Claimant’s long-term illnesses or personal identifiers after the hearing and publishing of the Employment Tribunal’s Reserve Judgment & Reasons.
20. Having balanced all the competing factors, anonymisation of the Judgment & Reasons or an RRO are not appropriate in these circumstances.

Employment Judge Tsamados  
Date: 28 September 2022