



EMPLOYMENT TRIBUNALS

Claimant: Dr Annette Plaut

Respondent: East London NHS Foundation Trust

Heard at: Exeter **On:** 16 December 2021

Before: Employment Judge Housego

Representation

Claimant: Written Response
Respondent: Written Application

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. Subsequent to an 8-day hearing the Tribunal found, by a judgment dated 16 November 2021 and sent to the parties on 23 November 2021, that the Claimant had been unfairly dismissed, and that she had suffered unlawful discrimination by being suspended from work. Her other claims were dismissed.
2. By email of 07 December 2021 the Respondent made an application for a reconsideration of the judgment, and for an adjournment of the remedy hearing listed for 20 December 2021.

3. The email is lengthy. It asserts that there are various findings of fact that are incorrect. These are 12 in number, some segmented.
4. The application concludes:
 5. “Given both the volume and significance of the incorrect and unsupported factual findings set out above, the tribunal is invited to reconsider its ultimate decision on the unfair dismissal, harassment and victimisation claims. It is necessary in the interests of justice for the tribunal to do so because the level of inaccuracy within this judgment requires the tribunal to reopen its decision making to see whether its conclusions can still be maintained once the factual inaccuracies highlighted above have been corrected. It is unjust for the Respondent to have findings against it maintained when they are reached on incorrect information and/or unsupported by the evidence that was in front of the tribunal.
 6. It is the Respondent’s case that the tribunal’s decisions on all claims cannot be supported once the correct factual findings have been made.”
5. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are 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 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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

6. The Tribunal expressly stated that not every piece of evidence would be cited in the judgment, but that it had all been considered: paragraph 35:

“With nearly 800 pages of document evidence and a week’s oral evidence with a narrative over many years with multiple people and issues raised this judgment deals with the most important relevant matters, and does not seek to make findings of fact about (or mention) every matter raised by both sides. That a matter, issue, or piece of evidence is not covered does not mean it was not considered. The Tribunal spent 1½ days in chambers finding facts and coming to conclusions.”

7. It would be impossible to draft a decision which accorded with all the evidence when some of the evidence conflicted. Where there are objections in the application that a finding of fact is inconsistent with evidence heard by the Tribunal that is (if correct) simply that the Tribunal did not accept that evidence.

8. Many of the observations and objections are no more than to disagree with the judgment.
9. If there are factual errors or misstatements in the judgment they do not undermine the basis for it, which is apparent from a full reading of it.
10. While not part of the decision on Reconsideration at the same time application was made to adjourn the hearing, and I refused that application at the same time. I set out the reasons for that decision here also.
11. The Respondent indicates that it will appeal. It is helpful to have the remedy hearing if there is an appeal, because if either party wants to appeal that outcome that party's appeal can be heard at the same time as the Respondent's appeal.
12. A remedy decision also enables the parties to assess the issues at stake in the Respondent's appeal.
13. The delay in waiting for an appeal to be heard, and then a remedy hearing if it is unsuccessful, then a possible further appeal, is not consistent with the overriding objective, and is unfair on the Claimant.
14. It is not unreasonable to have the remedy hearing swiftly, and the case was originally listed for liability and remedy at the hearing: it was the time taken for the hearing that meant it was liability only.

Employment Judge Housego
Date: 21 December 2021

Amended Judgment sent to the parties: 02 November 2022

FOR THE TRIBUNAL OFFICE