



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Woko

**Respondents:** 1. Brooklands Care Home Limited  
2. Ms Katie-Anne Crane

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. Time for presentation of an application to reconsider the reserved judgment is extended to 6 September 2022.
2. The claimant's application (dated 16 August 2022; received 6 September 2022), for reconsideration of the reserved judgment sent to the parties on 8 August 2022 is refused because there is no reasonable prospect of the decision being varied or revoked.

## REASONS

1. Rule 71 of Schedule 1 The Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ('the Rules') provides:

*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...*

2. The claimant's application for a reconsideration was received by the Tribunal on 6 September 2022. However, the claimant has provided evidence that the application was sent to the Tribunal and the respondents on 17 August 2022. It did not arrive until 6 September. I am, in the circumstances, prepared to exercise my discretion to extend time for the application to 6 September 2022.
3. Rule 70 of the Rules permits the Tribunal to: "*reconsider any judgment where it is necessary in the interests of justice to do ....*"
4. Rule 72 (1) of the Rules provides:

*“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. ...”*

5. The Rules give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate in the circumstances. The discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and the public interest in the finality of litigation (*Outasight VB Ltd v Brown* 2015 ICR D11 EAT). The then Honourable Mrs Justice Simler DBE (President) provided guidance in *Liddington v 2Gether NHS Foundation Trust* (UKEAT/0002/16).

*“34. [...] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. 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. They are not a means by which to have a second bite at the cherry, nor are they 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. Tribunals have a wide discretion whether or not to order reconsideration.*

6. The first step is to determine whether there is any reasonable prospect of the original decision being varied or revoked. In accordance with rule 72(1) of the Rules, this decision is mine alone. It would only be if the application is refused at this first stage that I would consult with my colleagues, Mrs McLaughlin and Mr Rowe. I should make clear however, that of course the original Judgment to which the Claimant's application relates was a unanimous judgment of all three Tribunal members.

7. I have decided that there is not any reasonable prospect of the original decision being varied or revoked, for the reasons set out below. In reaching my conclusion, I have borne in mind that a judgment should be reconsidered where it is in the interests of justice to do so. That is a deliberately wide test, though typically reconsideration would take place where a party introduces new evidence (which could not reasonably have been made available at the original Hearing), is able to identify some procedural irregularity in the way in which that Hearing was conducted or is otherwise able to identify an obvious error in the Tribunal's conclusions. Of course, that is not a complete list of what might be in the interests of justice. Reconsideration will rarely be appropriate where a party is seeking to re-argue points that were fully aired at the original hearing or to raise points or introduce evidence that could reasonably have been raised in the original Hearing. This arises from the principle that the interests of justice must have regard to the position of the Respondents, and to the general importance of finality in litigation.

8. The Claimant refers in her application to “*unconscious bias*”. It is not clear whether the Claimant considers there to have been ‘bias’ on the part of the Tribunal, so I will address it here. At no point during the Hearing did the Claimant say anything which gave the slightest indication that she considered there to be bias (conscious or unconscious) at play. I do not recall anything that occurred during the Hearing that could properly be said to give rise to

any suggestion of unconscious (or conscious) bias and the Claimant's letter provides no basis for such an assertion.

9. The Claimant also refers in her application to there being '*something wrong with the procedure at the hearing*'. The Claimant does not say what that 'something' is alleged to be. Again, I do not recall anything that occurred during the Hearing at any point that could properly be said to give rise to any such suggestion and the Claimant's letter provides no basis for such an assertion.

10. The rest of the Claimant's application seeks to repeat arguments which she either made or had the opportunity to make at the final hearing. The Claimant is challenging the Tribunal's findings of fact, its assessment of the evidence and the conclusions that the Tribunal reached from those findings. Set against that general point, I will now respond to each of the points put forward by the claimant in her careful and detailed application for reconsideration:

- a. The claimant states that '*a sudden rise in new statements was constructed after I was dismissed. Mr Nair received my complaints letter on January 13<sup>th</sup>, 2021, and I also stated in the letter that I would bring legal action against Ms Crane. The new statements are all dated 1<sup>st</sup> February 2021. Mr Nair and Ms Crane were fully aware that I was going to bring legal proceedings exactly 34 days before I submitted my claim on 15<sup>th</sup> February 2021. This explains the numerous increases of false allegations from January 13<sup>th</sup>, including the allegation of 'swearing around the care home'. The Peninsula report on Ms Svoboda accused me of swearing at her was also fabricated and conveniently appeared after I mentioned legal proceedings in my complaints letter. My personal text message was manipulated to suit their purposes.'*

The Tribunal found as a fact that the statements were taken from staff after the claimant had appealed the decision to dismiss (in which letter the claimant refers to legal proceedings) but that they were taken as part of the appeal process (paragraph 32 of the reserved Judgment). Ms Crane had already taken the decision to dismiss the claimant based on the earlier allegations. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground because the issue was considered by the Tribunal.

- b. Ms Walker '*made two false statements on 1<sup>st</sup> and 2<sup>nd</sup> November 2020 regarding me calling residents abusive names but contacted me on 9<sup>th</sup> November to work in the case home, and before the text message was even sent, and conveniently when I received my investigation letter. This information was overlooked.'*

The Tribunal did not overlook 'this information'. The relevant facts are set out at paragraphs 12-21 of the reserved Judgment. I do not consider there is a reasonable prospect of the original decision being varied or revoked under this ground because the facts were considered by the Tribunal.

- c. '*If I was such a threat to residents, and there was any truth in [Ms] Walker's allegations then it does not make sense that she would contact me afterwards to work in the Care home. She fabricated the whole incident, and Ms Crane irresponsibly used my personal text message to strengthen the allegation although it had no connection with residents.'*

The Tribunal's findings of fact about Ms Walker contacting the Claimant and the second Respondent relying on the text as part of her investigation are set out at paragraphs 20 & 23. The Tribunal's findings as to the inadequacy of the investigation are set out at paragraphs 26-29 of the reserved Judgment. The Tribunal concluded that the Claimant's claim against Ms Walker, for which the Respondents would have been vicariously liable, failed for reasons set out at paragraph 60 of the Judgment. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground because the issue was considered by the Tribunal.

- d. *'Ms Crane excluded me, ignored my phone calls and 'kept me in the dark' the whole time that she did her investigation on me. There was absolutely no communication with me. This exclusion relates to direct race discrimination. She would have treated me more favourably and would not have excluded me from my own investigation if I was white.'*

The issues for the Tribunal to determine were decided with the parties at two preliminary hearings and discussed at the outset of the final hearing. At the final hearing a second comparator was added to paragraph 4.2, and one additional issue was added (see paragraph 6). The list of issues for the Tribunal to determine is set out at paragraphs 4-6 of the Judgment.

The Tribunal's findings of fact in respect of the issues concerning the Second Respondent are set out at paragraphs 15-21 and the conclusions at paragraphs 61-66. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground because the issue was considered by the Tribunal.

- e. *'[Ms Crane] deliberately chose not to mention that I could bring a witness in the letter, and this also played a role in her racist act against me, this was so that she could harass me. I did not mention the harassment claim when I submitted my claim form and my complaints letter because there is not a harassment section on it. And I assumed that harassment and anything else related to racism just fell under a racial discrimination complaint as the law suggests (Equality Act 2010).'*

The Tribunal found as a fact that the second respondent did not advise the Claimant of a right to be accompanied at paragraph 21 of the Judgment.

We also found as a fact that the Second Respondent did not raise her voice at the meeting (see paragraph 25). That conclusion was reached because the Claimant had not alleged that the Second Respondent *raised her voice* at the meeting when she raised a grievance/wrote the appeal letter, nor did she raise that allegation at the appeal hearing. We did not reach that conclusion because the claimant failed to mention a '*harassment*' claim when she submitted her appeal or at the appeal hearing. There is no reasonable prospect of the original decision being varied or revoked on this ground.

- f. *'I understand that allegations of abuse must be investigated but when Ms Crane did not find any evidence of abuse on 6<sup>th</sup> November 2022, she still decided to construct an investigation letter on the same day. She deliberately did not tell Peninsula this information, therefore they did not receive all the facts of the*

*investigation. They were also not aware that I only had one day to prepare for the investigation meeting’.*

I do not understand what the Claimant means by ‘*when Ms Crane did not find any evidence of abuse*’. On 2 November, Ms Nair reported to Ms Crane what Ms Walker had told her. Ms Walker was asked to write a statement, which she did. Ms Crane subsequently wrote to the Claimant on 6 November, following the allegations made by Ms Walker. Ms Crane then spoke to Peninsula. The Tribunal’s findings of fact are set out at paragraphs 13-15. I do not consider there is a reasonable prospect of the original decision being varied or revoked under this ground because these facts were considered by the Tribunal.

- g. *‘My skin colour aroused her suspicion to continue constructing an unnecessary investigation letter on 6<sup>th</sup> November 2020, and this was even before I sent any text message. Also, her reporting me to the local authorities as a threat to the ‘whole home’ and her increasing false allegations regarding the number of abused residents, would not have occurred if my skin colour was white. Her actions were racially motivated.’*

The Tribunal’s findings of fact in relation to this point are set out at paragraphs 13-30 and the conclusion is at paragraph 64. The Tribunal commented on the ‘whole home’ report at paragraph 30, as a ‘gross exaggeration’. Nonetheless, we concluded that the second respondent was not motivated, consciously or unconsciously, by the claimant’s race. The claimant disagrees with that conclusion, but I am satisfied that it is supported by the findings of fact and that the Tribunal applied the law to the facts correctly. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground.

- h. *‘She did not suspend me only on Peninsula’s advice, it was because she wanted to remove me from the company at a faster rate, and that’s why my notes were so short, and not as detailed and long like [Ms] Svoboda and Ms Young.*

*Peninsula gave Ms Crane advice, but she left out important information. Peninsula were not carrying out the investigation and did not write the investigation notes, but Ms Crane did, therefore she was able to deliberately manipulate facts about me to Peninsula.’*

The Tribunal’s findings of fact are set out at 13-27 & 34-36 and the conclusion is at paragraph 64. The Tribunal read the notes referred to. The Tribunal concluded that the second respondent was not motivated, consciously or unconsciously, by the claimant’s race. The claimant disagrees with that conclusion, but it is supported by the findings of fact. Again, I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground.

- i. *‘Hope may not have been reported to the DBS, but Ms Crane would have let her finish her probation if she was a white qualified nurse. Mr Nair kindly paid for her training and conveniently Ms Crane was the one to make sure she did not finish her probation. Ms Crane would have given more support to Hope if she was white and would not have removed her from the company so quickly.’*

The Tribunal’s findings of fact are set out at paragraph 37. The Tribunal found that Hope did not pass her probation for the reasons set out in paragraph 37. The Tribunal made its

findings of fact before it reached its conclusion at paragraph 64. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground.

- j. *'The original decision should also be reconsidered because I also did not have an opportunity to cross examine the witnesses from the other party. I understand why Ms Walker could not be called as a witness due to personal problems, but I was not given an explanation to why Ms Shaw and Ms Rousava were not called as witnesses.'*

*Ms Shaw and Ms Rousava's witness statements played a central role at the hearing, and both reconstructed two statements each with serious false allegations against me. The respondents had a responsibility to explain to me why they were not at the hearing to be cross examined, and they never explained it. If I had professional legal representation (I have a solicitor now) I'm sure there would have been less unconscious bias, and the respondents would have given me an explanation as to why Ms Shaw and Ms Rousava were not at the hearing.'*

Neither the Claimant (as far as I recall), nor the Tribunal suggested at the hearing that the respondents should have called Ms Shaw and/or Ms Rousava. In any event, the claimant could have called them as witnesses. She did not, presumably for the same reason we set out in the Judgment in respect of Ms Walker (paragraph 59).

The statements of Ms Shaw and Ms Rousava were taken after Ms Crane's decision to dismiss the claimant was taken. What the two witnesses said as part of the appeal process was not therefore relevant to Ms Crane's decision. The Tribunal's findings of fact are set out at paragraphs 31-32. Our conclusion is at paragraph 64. I do not consider there is a reasonable prospect of the original decision being varied or revoked on this ground.

- k. *'It would be unfair to deny me a reconsideration because although there was no action from the DBS, the local authorities still believe the false allegations against me.'*

*I feel that I've been denied the right to clear my name. I had no knowledge of the lies Ms Crane was telling the local authorities about me. I saw the local authority document for the first time at the hearing. It was deliberately excluded from the bundle.'*

*My race was a factor in my treatment from Ms Crane. It may not have been the main reason, but it did have a significant influence on the outcome of my poorly conducted investigation.'*

The Tribunal made it clear in the reserved Judgment that the respondents' investigation was inadequate (see paragraphs 56 & 64) but concluded, for reasons supported by its findings of fact, that race played no part whatsoever in the respondents' actions.

11. In conclusion, having carefully considered the Claimant's application and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the reserved Judgment or any part of it being varied or revoked for the reasons set out above. The Tribunal's determinations were made on hearing evidence from the claimant and the respondents and the Tribunal's findings of fact

and conclusions are not affected by the submissions made by the claimant in her application for reconsideration. The application for reconsideration is therefore refused.

12. I apologise to the parties for the delay in issuing this Judgment.

**Employment Judge Scott  
Dated: 21 November 2022**