



EMPLOYMENT TRIBUNALS

Claimant: Mr D Weedon

Respondent: Nestle UK Limited

RECONSIDERATION JUDGMENT

The Respondent's application dated 23 September 2022 for reconsideration of the judgment sent to the parties on 10 September 2022 is refused. It is not in the interests of justice to reconsider the judgment.

REASONS

1. The Respondent's application is not for reconsideration of the judgment in this case which they acknowledge was a decision open to the Tribunal on the evidence. The application is based on the Tribunal's criticisms of the evidence of Mr Hastings which the Tribunal found to be lacking in credibility and unreliable at times.
2. Mr Hastings tested positive for covid-19 and was unable to attend the hearing in person to give evidence. Arrangements were therefore made for him to give evidence remotely by CVP. The application for reconsideration essentially asks us to temper our criticisms of Mr Hastings' evidence. It says he was feeling particularly unwell but took the decision not to request a postponement for fear of prejudicing the Claimant.
3. The application further states, "We do not suggest that Mr Hastings' evidence was unreliable because of this, but this is not recognised and does not appear to have been taken into account during the panel's deliberations as a possible explanation for why Mr Hastings' recollection of the detail (may) not have been clear in places".
4. The panel has considered this application and each member reviewed their notes of the evidence. Firstly, none of the panel remembers Mr Hastings looking ill. Secondly, it was not suggested, either by Mr Hastings or counsel, that

he was feeling unwell during the hearing.

5. The second basis for the application related to the Tribunal's view that an email between Mr Hastings and Mr Robinson may have been omitted from the hearing bundle. The suggestion is that this was not put to Mr Hastings. However, the panel's notes support the view that Mr Hastings was asked about this by the Claimant in cross-examination and by the Employment Judge and his reply was that he could only surmise why Mr Robinson said what he did.

6. The third basis for the application relates to the Tribunal's comment as to the evidence that Mr Hastings was only contacted by the Respondent's solicitors about six weeks before the hearing to give a witness statement when the litigation had been live for about eighteen months. No evidence in the form of copy letters or a time line has been provided to support this part of the application. The Tribunal stands by their view of this evidence.

7. In all judgments where a Tribunal has to make findings of fact, those findings must be justified by reference to the evidence. This is what we did in this case. It is well established that reconsiderations can only be determined on new facts if they could not have been known at the substantive hearing. If Mr Hastings was ill while giving evidence, he knew it at the time and he or counsel should have made it known to the Tribunal. They did not do so.

8. Accordingly, the application is refused.

Employment Judge M **Butler**

Date 21 November 2022