Case No: 2203476/20

EMPLOYMENT TRIBUNALS

Claimant: Ms LR

Respondents: (1) Westminster City Council
(2) Mr CC
(3) Mr AH

London Central
Employment Judge Goodman **24 November 2022**

ORDER

The claimant's application for reconsideration dated 14 November 2022 is refused as it has no reasonable prospect of success .

REASONS

1. On 2nd November 2022 the parties to this claim was sent the reserved final judgement and reasons. All the claims were dismissed. The public hearing, held in person, had run from 21 September to 3 October 2022.

2. On 14 November 2022 the claimant applied for reconsideration of the judgement. In a 52 page application extending to 167 paragraphs, she set out her grounds. She added to these grounds in an email of 17 November.

3. On the 16 and 17 November 2022 she sent emails with two transcribed passages from meetings with the respondent, though it is not clear when these meetings took place, and links to the recordings of the telephone conversation with Anita Singh, which we had declined to hear and which is discussed in the judgement.

4. I have grouped the claimant's concerns by topic:

   4.1 Most of the application consists of various disputes about the findings of fact we made after hearing the evidence, and about the significance

of those facts,

4.2 A request to reconsider the continuing anonymity of respondents AH and CC

4.3 A number of questions about CC and EM and whether they were engaged in an "inappropriate" relationship, Plus a request for an order for specific disclosure of that communications.

4.4 A complaint that EM did not attend court when the subject of a witness order

4.5 The tribunal hearing should have been postponed for health and medical reasons (eyesight) because of a recent funeral, and because she had lost her job in July 2022.

4.6 She needed more time because of ADHD, specifically, when making a submission at the conclusion of the evidence

4.7 Some passages in the respondent's bundle were highlighted

4.8 An assertion that her claim was in time because the last incident of sexual harassment was 24 January 2020,conceding that was not clear from the list of issues. Argument why there was a continued course of conduct

4.9 The hearing bundle included documents which had not formed part of the disciplinary investigation, and should have been excluded. Some items she had exchanged with the respondent had not been included in the bundle.

4.10 She did not understand the significance of the list of issues.

4.11 A request for access to the laptop she returned to Westminster County Council at the conclusion of the case

4.12 The claimant was interrupted by the tribunal during her cross examination.

4.13 the tribunal showed bias by allowing CC's outburst when he was giving evidence: it should not have been recorded as evidence.

Relevant Law

5. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal "may reconsider any judgment where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

6. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

7. Under the 2004 rules, prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. **Ladd v Marshall (1954) EWCA Civ 1** set out the principles on which evidence could be admitted after the judgment: it could not have been obtained with reasonable diligence before the hearing; it would have

an important influence on the outcome; the evidence was apparently credible. The Employment Appeal Tribunal confirmed in **Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review); the ET will generally apply the **Ladd v Marshall** criteria, although there is a residual discretion to permit further evidence not strictly meeting those criteria to be adduced if for a particular reason it is in the interests of justice to do so.

8. When making decisions about claims the tribunal must have regard to the overriding objective in rule 2 of the 2013 regulations, to deal with cases fairly and justly, which includes ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, and seeking expense.

Discussion and Conclusion

9. A final hearing is intended to be final. Reconsideration is not an opportunity for a party to re argue their case after the decision has been made. The claimant's many contentions about the findings we should have made, or the significance we should have attached to pieces of evidence, are not grounds for reconsideration. Taking the interests of justice over all, it is in the best interests of justice that disputes reach a conclusion. If the claimant considers that errors of law have been made in the inferences we made from our findings of fact, that should be the subject of an appeal to the Employment Appeal Tribunal.

10. All the points about the time limit are about the findings of fact that we made, or are submissions made after the judgement.

11. The claimant has advanced no coherent reasons why AH and CC should not retain anonymity, or why the tribunal decision on this was wrong.

12. Tribunals admit evidence that they consider relevant to the issues they have to decide. Having heard all the evidence, we did not consider that EM could assist on the disputed facts of what happened. Making a finding about the specific nature of the relationship between EM and CC was not going to help us decide what happened between the claimant and CC. The claimant was not able to explain why disclosure of messages between them was necessary.

13. Postponement: The application to postpone was refused for the reasons given at the time. The claimant raises the question of her eyesight. She said she was not able to wear her contact lenses, and was due to pick up new glasses at the weekend. Her camera was switched off during the case management hearing. At the hearing in Victory House on subsequent days, she did not wear glasses, and appeared to have no difficulty reading. At the time of hearing there was only a passing reference to a funeral, and only now does the claimant explain whose funeral it was. Information provided does not suggest that it was a reason to postpone in any event. She had lost her job in July, but that does not explain why she was not able to proceed with the hearing starting two months later.

14. ADHD: the tribunal's assessment of the evidence is contained on the judgement. As we noted there, the specialist had not said what adjustments should be made. The tribunal no some experience that litigants in person need more time, more explanation, and more breaks, and she was allowed that.

15. It is sometimes necessary for employment judges to intervene in cross examination, to clarify the underlying premise of the question so as to make sure that it is fair, to try to understand the purpose of the question in case it is about something which is not an issue in the case, to stop a statement being made which is not a question for the witness, or to restrain an improper question. This applies whether the party is represented or not represented, but is more common with unrepresented parties because they are less familiar with the process. As for the CC outburst when answering questions, tribunals read and listen, and then decide what to believe and what is significant. It is part of the process.

16. On the documents bundle, if she was unaware of the content, that was because she had not prepared by reading the bundle, or had delayed it. There was a page which had been highlighted, but the tribunal is well aware that we must read documents as a whole, and use our own judgement about what is significant or relevant.

17. On the list of issues, there have been a number of case management hearings in these proceedings. It is hard to believe that at the end of all these case management hearings, which specifically address what the issues are that the tribunal has to decide, that the claimant was not aware of its significance. If it contained factual errors it was open to her to mention those and get it amended. The tribunal was aware there were some errors about dates.

18. An employment tribunal has no power to make an order for delivery of property or disclosure of documents after the case has reached a conclusion. It is for the claimant (or the police) to address access with Westminster council directly.

19. As to the additional evidence in the form of transcripts of internal meetings, and links to the Anita Singh recording, this material was plainly available for the hearing had the claimant had the claimant adduced it at the time. In any case, it is not shown how they need to sing recording would be useful, given the reasons we set out in the judgement on this point, on the claimant does not explain how the transcripts improve only hearing notes that we did read.

Conclusion

20. The application for reconsideration has no reasonable prospect of success. Accordingly it is refused under rule 72

Employment Judge GOODMAN

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Date 24/11/2022
JUDGMENT SENT TO THE PARTIES ON

25/11/2022

FOR THE TRIBUNAL OFFICE