Case Number: 3205217/2021

EMPLOYMENT TRIBUNALS

Claimant: **Miss D Gisby**

Respondent: **Southend-on-Sea Borough Council**

JUDGMENT FOLLOWING RECONSIDERATION

The claimant's application dated **7 April 2022** for reconsideration of the judgment sent to the parties on **24 March 2022** is refused.

There is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The Claimant gave evidence at the hearing held by CVP on the 31 January 2022 and was represented by Counsel. The written judgment and reasons for the reserved decision were sent to the parties on 24 March 2022.

2. The Claimant's application for reconsideration is set out in an email dated 7 April 2022, the original email has not reached the tribunal file but the tribunal received the email dated 27 April 2022 from the Claimant to the Respondent acknowledging receipt and copying in the Tribunal. Unfortunately this email was not referred to the Judge and the application was only brought the Judge's attention when the Claimant telephoned the Tribunal office in December 2022 enquiring about the outcome of her reconsideration application. The Judge has accepted the reconsideration request as being made in time and has considered it under Rule 72.

3. I have carefully considered the grounds raised. Given the length and detail of the application I consider that it is disproportionate to address each point raised on a line by line basis.

4. Rules 70 to 73 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of Tribunal Judgments as follows:

*"**Principles***
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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
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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
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(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.

Relevant authorities

5. In *Outasight VB Ltd v Brown UKEAT/0253/14* the EAT held that the Rule 70 ground for reconsidering Judgments, (the interests of justice) did not represent a broadening of discretion from the provisions of Rule 34 contained in the replaced 2004 rules, (at paragraphs 46 to 48). HHJ Eady QC explained that the previous specified categories under the old rules were but examples of where it would be in the interests of justice to reconsider. The 2013 rules remove the unnecessary specified grounds leaving only what was in truth always the fundamental consideration, the interests of justice. This means that decisions under the old rules remain pertinent under the new rules.

6. The key point is that it must be in the interests of justice to reconsider a Judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, **for example a new piece of evidence that could not have been produced at the original hearing** [emphasis added] or a mistake as to the law. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties

have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have, "a second bite at the cherry", (per Phillips J in *Flint v Eastern Electricity Board [1975] IRLR 277*).

7. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in *Ministry of Justice v Burton and anor [2016] EWCA Civ 714* in July 2016 where Elias LJ said that:

> *"*the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board [1975] ICR 395*) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray and Vials [1994] ICR 384* Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review*."*

8. In *Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the EAT per Simler P,* held at paragraph 34 that*:*

> "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 by 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."

Decision

9. The grounds are in essence an invitation for the Judge to revisit the evidence that arguments that I heard and to come to different conclusions; they are also points that the Claimant, represented by Counsel, had an opportunity to address in submissions at the hearing. The application amounts to a request that the Tribunal allows the Claimant to re-argue her case.

10. The interests of justice are that there be finality in litigation, absent any good reason for a decision to be reconsidered. That a party does not like the conclusions reached by a tribunal and would like a second chance to present his or her arguments, is not such a reason.

11. There is no reasonable prospect of the Judge reaching a different decision on reconsideration. The application for reconsideration is refused.

Employment Judge C Lewis
Dated: 12 December 2022