EMPLOYMENT TRIBUNALS

Claimant: **Miss W Horrocks**

Respondent: **Stateside Foods Limited**

JUDGMENT

The claimant's application dated **7 December 2022** for reconsideration of the judgment sent to the parties on 14 October 2022 for which written reasons were issued on 7 December is refused.

REASONS

1. Although the claimant did not expressly make a reconsideration request in accordance with the Rules of Procedure, that is how I have treated her email of 7 December 2022. That, in essence, sets out a number of reasons why the claimant says my judgment about her claim was wrong.

2. The claimant failed to copy her email to the respondent in accordance with rule 71 and that failure was corrected by the Tribunal. Following that the respondent has provided some initial comments on the application.

3. The claimant asserts a number of grounds why she believes that my judgment should be reconsidered. Her email is not numbered so I cannot easily cross reference this to her application, but her grounds can be summarised as follows:
    a. That she was disadvantaged for the final hearing by the late preparation of the bundle by the respondent and it appears that the claimant expected the response to be struck out in consequence and she only prepared a short witness statement because she did not expect the case to go ahead;
    b. The claimant is unhappy with what I have said about the pain she says she suffered as a result of ill-fitting shoes;

c. She disagrees with my findings about a new contract she had been issued;
d. A letter which was headed "without prejudice" was admitted into evidence on the application of the respondent who had argued it was not in fact without prejudice. At the hearing the claimant did not object to its admission and I found it did not in fact contain an offer of settlement any event. The claimant acknowledges that "she was happy for this letter to be seen" but has sent in the reply from the respondent to that letter which I had not previously seen;
e. The claimant disagrees with findings I made about pay;
f. The claimant asserts that trust and confidence had broken down in the respondent;
g. The claimant disagrees with the deposit she had been ordered to pay by Judge Miller-Varey being paid the respondent and says the deposit should have paid to the Tribunal.
h. The claimant has also submitted a large number of additional documents, both attached to this email and subsequently. I note however that none of this is referred to as new evidence which was not available at the time of the final hearing on 11 October 2022.

4. In relation to the first matter, the respondent's non-compliance and the failure by the tribunal to strike out the response, the position is as follows.

5. First I am not aware of any express strike out application and having checked the tribunal file, we appear to have no record of an outstanding application. However, I was aware at the outset of the hearing that the claimant was unhappy about the respondent's late preparation for the hearing. Mr Warnes offered an explanation for what had happened, but I had some sympathy for the claimant as a litigant in person about this. At the outset of the hearing, I made clear to the claimant that I would be sympathetic if she wanted to make an application to adjourn the hearing but warned her that this would result in a significant delay for the final hearing because of the number of outstanding cases in Manchester. Ms Horrocks told me she wanted to get on with the hearing and we proceeded on that basis.

6. Even if the response had been struck out and the respondent had not attended the hearing at all, the claimant would have had to show, on the balance of probabilities, that she had been constructively dismissed for judgment to have been made in her favour. She did not do that.

7. At the start of the final hearing, I was concerned by the length of the claimant's witness statement. Judge Miller-Varey's judgment on strike out and her deposit orders explains in some detail what the claimant is required to show to succeed in a claim of constructive dismissal. She had made a deposit because she found the claimant had little reasonable prosect of establishing that she had been dismissed at the preliminary hearing. Despite the time taken by Judge Miller-Varey in that regard, the claimant appeared to have no regard to what she would have to show given her very brief (less than 1 page) witness statement. In light of that, and nothiwthstanding the potential prejudice to the respondent, because the claimant was a litigant in person and I was aware she felt disadvantaged by the respondent's late preparation, I allowed the claimant

to explain her case to me orally and to provide additional evidence of her claim. My findings of fact took that evidence into account. Further she had the benefit of Judge Miller-Varey's detailed explanation of what she was required to show at the final hearing. It is unfortunate if the claimant now feels there was more that she could have said either orally or in her statement but the hearing was her opportunity to be heard and this is not a ground to reconsider the decision.

8. Points (b), (c) (e) and (f) above are matters where the claimant disagrees with my findings of fact. I understand that she does not accept the conclusions I reached but I did so on the basis of the evidence before me and on the balance of probabilities. I had to decide whose evidence I preferred. My written reasons explain why I reached the conclusions that I did and why I did not consider that these were matters which amounted to a fundamental breach of contract. It is unnecessary to repeat them here. In any event the claimant has not appear to suggest that I was wrong in how I applied the law, simply that she does not accept that I am right. It is perhaps inevitable in any litigation that one party is dissatisfied with the outcome, but that is not a reason to relitigate the matter.

9. In relation to the issue of "without prejudice" letter I accepted the respondent's submissions that in fact this was not a document covered by without prejudice privilege and the claimant herself acknowledges that "she was happy for the letter to be seen". At the hearing she did not object to the respondent's application to admit that document, but she appears to suggest that I should have looked at another document. The point that I make below about the inclusion of additional documents more widely also applies to that document.

10. The claimant has also submitted a large number of additional documents with her application. The claimant has not suggested that any of these are documents which she did not have access to before the hearing. I took my decision at the final hearing based on the evidence before me. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Accordingly, it is only in the interests of justice to reconsider a judgment in limited circumstances. Reconsiderations are a limited exceptions to the general rule that employment tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a "second bite of the cherry". In *Stevenson v Golden Wonder Ltd* 1977 IRLR 474, EAT, (in relation to the review provisions under a previous version of the Tribunal Rules) Lord McDonald said the (old) review provisions were *'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'*. I consider the same principle to apply to reconsideration in the interests of justice under Rule 70 and therefore it is inappropriate for me to reconsider my judgment simply because the claimant thinks my decision would have been different if she had produced these documents at the final hearing. I have not looked at them.

11. Finally the claimant suggests that the deposit should not have been made to the respondent. My judgment explains why the deposit was paid the respondent. I found against the claimant for the same reasons that Judge Miller Varey ordered the deposit to be made. In those circumstances the deposit is

payable to the respondent under the Employment Tribunal Rules of Procedure. I have no discretion about that and there is no provision for me to determine that the deposit should be kept by the Tribunal. That submission is misconceived.

12. For the reasons set out above it is not therefore in the interests of justice that the original decision be varied or revoked and there is no prospect of the application succeeding.

Employment Judge Cookson

Date 2 February 2023
JUDGMENT SENT TO THE PARTIES ON

3 February 2023

FOR THE TRIBUNAL OFFICE