



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Burton

Respondent: Harrogate and District NHS Foundation Trust

JUDGMENT

The Claimant's application for the Judgment of 6 July 2022 to be reconsidered is refused.

REASONS

1. The Claimant's application for reconsideration has been presented outside the time limit set down in Rule 71. The Claimant asks for the application to be considered out of time, relying on the fact that the application has been made at the suggestion of the Employment Appeal Tribunal. There was nothing to prevent the Claimant from making the application within time. If her application for an extension of time were refused, the potential prejudice to her would be that her appeal would continue without the Tribunal's comments on her grounds of appeal and she would lose the possibility of her claim being upheld on reconsideration without the need to pursue her appeal. As explained below, however, the Tribunal's comments on her appeal and its view on the merits of her reconsideration application would not in any event have been in her favour. The Tribunal refuses the application for an extension of time.
2. Nevertheless, in the hope that this may be of assistance to the parties and the Appeal Tribunal, the Tribunal gives the following comments on the Appeal Tribunal's Order and the Claimant's application.
3. The Tribunal confirms that the Claimant's counsel did not put the Claimant's case in the way that is now being raised on appeal. The skeleton argument for the Claimant mentioned the authorities of Chesterton, Cavendish Munro, Simpson and Norbrook Laboratories but did not deploy them in the way in which they are now being deployed on appeal.
4. If the Tribunal had considered the merits of the Claimant's reconsideration

application, it would have refused it after a preliminary consideration under Rule 72(1) on the ground that there was no reasonable prospect of its decision being varied or revoked, for the following reasons.

- 3.1 Ground 1: The Tribunal was fully aware in reaching its decision that personal interest and public interest are not mutually exclusive, that it needed to consider all the circumstances of the case in reaching its findings, and that a worker's motive in making a disclosure is not the same as their subjective belief. The Tribunal nevertheless concluded that the Claimant had not presented sufficient evidence to substantiate her contention about her beliefs at the time when she was making the disclosures, whether that be a belief she was making them in the public interest or a belief that they tended to show that health and safety was at risk. The Tribunal gave its reasons for that conclusion.
- 3.2 Ground 2: The Tribunal was fully aware in reaching its decision that the threshold for the adequacy of information that an individual provides must not be set too high. But the Tribunal nevertheless concluded, for the reasons it gave, that the Claimant had not presented sufficient evidence to establish that, even if she had made the disclosures in the belief that her colleagues' health and safety was in danger, that belief was reasonable.
- 3.3 Ground 3: The Tribunal was fully aware in reaching its decision that it needed to consider whether the disclosures as a whole amounted to information that tended to show that health and safety was being endangered. The Tribunal concluded, however, for the reasons it gave, that the Claimant had not presented sufficient evidence to establish that, even if she had made the disclosures in the belief that her colleagues' health and safety was in danger, that belief was reasonable.

Employment Judge Cox
Date: 13 January 2023