



EMPLOYMENT TRIBUNALS

Claimant: Miss D Fisher

Respondent: Tesco Stores Limited

JUDGMENT

The claimant's application dated 24 January 2023 for reconsideration of the judgment sent to the parties on 12 December 2022 and in respect of which written reasons were sent to the parties on 16 January 2023 is refused.

REASONS

Background to the application

1. Judgment and reasons were given orally in this case on 9 December 2022.
2. An application for reconsideration was made initially on 24 December 2022 at the same time as a request for written reasons.
3. Written reasons were sent to the parties on 16 January 2023, together with a letter from the Tribunal written on my instructions, asking the claimant to confirm whether she wished the judge to consider the reconsideration application as it stood, whether she wished to make a revised application, or whether she no longer wished to proceed with the application.
4. A revised application was made on 24 January 2023 and it is this application which I consider.

The law relating to reconsideration applications

5. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
6. I can refuse the application based on a preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked: Rule 72(1) of the 2013 Rules of Procedure.

7. Finality in litigation is important. This was explained in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** where the EAT chaired by Simler P said in 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.”

8. In carrying out a preliminary consideration under rule 72(1), I must act in accordance with the overriding objective which appears in rule 2 of the 2013 Rules of Procedure, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

My decision on the application

9. The complaints the Tribunal had to deal with at the hearing in December 2022 were the complaints of direct disability discrimination which we set out in the Annex to our written reasons. Complaints of failure to make reasonable adjustments had been dismissed at a preliminary hearing on 11 April 2022. We were not, therefore, considering complaints of failure to make reasonable adjustments. The complaints of direct disability discrimination were all about things which Richard Wareham was alleged to have done or failed to have done. We found that some of these complaints were not made out on the facts and, therefore, failed. We concluded that the claimant had not discharged the initial burden of proof on her in relation to the allegations which were proved as a matter of fact.

10. Some of the points raised in the application for reconsideration appear more relevant to a complaint of failure to make reasonable adjustments than to the complaints of direct discrimination which the Tribunal was considering.

11. In relation to the Tribunal's decision on the complaints of direct discrimination, the application does not argue that the Tribunal incorrectly made any findings of fact on the basis of the evidence before it. The application does not identify any new evidence which has come to light since the hearing which might have made a difference to the Tribunal's decision.

12. The application does not set out what factors the claimant says should have led the Tribunal to conclude that she had satisfied the initial burden of proof on her to prove facts from which the Tribunal could have concluded there was unlawful direct disability discrimination.

13. I conclude that there is no reasonable prospect of any of the points made in the application leading the Tribunal to reach different findings of fact in relation to the allegations we found were not established on the facts. I conclude that there is no reasonable prospect of any of the points made in the application leading the Tribunal to conclude that the claimant had satisfied the initial burden of proof in

relation to the allegations which were proved as a matter of fact.

14. For these reasons, I conclude that there is no reasonable prospect of the Tribunal's decision being varied or revoked and I refuse the application.

Employment Judge Slater
Date: 7 March 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON
9 March 2023

FOR THE TRIBUNAL OFFICE

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