



EMPLOYMENT TRIBUNALS

Claimant: H
Respondent: Ministry of Defence
On: 2 March
Before: Employment Judge Ahmed (sitting alone)
At: Leicester

JUDGMENT ON AN APPLICATION FOR A RECONSIDERATION

The Respondent's application for reconsideration of 16 January 2023 of the judgment dated 19 December 2022 is refused.

REASONS

1. By a letter dated 16 January 2023 the Respondent applies for a reconsideration of part of the judgment dated 19 December and sent to the parties on 20 December 2022.
2. The application relates to paragraph 1 of the judgment which concluded that the Claimant was sexually harassed on 18 August 2018 and that such assault occurred in the course of employment. The reasons for that part of the decision were set out at paragraph 162.
3. The Respondent's application for reconsideration, in broad terms, seeks to argue that the Tribunal:
 - 3.1 misapplied or misunderstood the decision in **Chief Constable of Lincolnshire Police v Stubbs** (1999) IRLR 81 and/or the EHRC Code of Practice;
 - 3.2 took into account irrelevant considerations;
 - 3.3 misunderstood the operation of International Law;

3.4 misunderstood or misapplied the breadth of Military Service Law and Courts Martial.

4. Rule 72 (1) of the Employment Tribunal Rules of Procedure 2013 provides:

“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...”

5. The Employment Appeal Tribunal in **Trimble v Supertravel Ltd** [1982] ICR 440 made it clear that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by a review.

6. In **Stevenson v Golden Wonder Limited** [1977] IRLR 474 the EAT made it clear that a review (now reconsideration) is not a method by which a disappointed litigant gets a “second bite of the cherry”. The EAT made it clear that the review provisions were not intended to provide parties with the opportunity of a re-hearing at which the same evidence can be rehearsed with different emphasis or further evidence adduced which was available earlier.

7. The matters raised by the Respondent in the reconsideration application are either those which were fully ventilated at the merits hearing or are an attempt to re-litigate matters already determined. If there was an error of law that is a matter for appeal and not reconsideration.

8. There is therefore no reasonable prospect of the original decision being varied or revoked. The application for a reconsideration is refused.

Employment Judge Ahmed

Date: 2 March 2023

FOR THE TRIBUNAL OFFICE

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