



# EMPLOYMENT TRIBUNALS

**Claimant:** G Oliver

**Respondent:** Secretary of State for Work and Pensions

## JUDGMENT

The claimant's application dated **8th March 2023** for reconsideration of the judgment delivered orally and sent to the parties on **9th March 2023** is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. This was a unanimous decision of the tribunal.
2. It is perfectly proper for the tribunal to make a finding of fact on the evidence before it.
3. Whether or not the Claimant had in fact committed the misconduct alleged, where that was able to be determined on that evidence, was clearly relevant in the context of this case.
4. The evidential basis for that unanimous finding on the facts that the Claimant had, despite his denials, done the acts alleged against him was fully explained in the oral judgment.
5. The Claimant's evidence when confronted with the documentary evidence of emails sent by him at material times when he had alleged he did not have access to his work lap top was initially that he could not offer any explanation. He admitted, however, that he had sent these emails. He confirmed in evidence that he only used this lap top to deal with work emails. He then, after the lunch adjournment, gave the account that the timings on the relevant emails must be incorrect. That was that one was in fact sent at least 1 ¾ hours before the time shown but that the other was sent at least 1 ½ hours after the time shown. It was only in his written submissions that the Claimant made any reference to the

possibility of his sending or receiving emails on his mobile phone, but I was never actually his evidence that this is what had in fact happened on this occasion.

6. The only intervention by the Judge in the course of the Respondent's closing submissions was to challenge a mis-statement that the material circumstances of an appropriate comparator on the direct discrimination claim would be someone working in the office rather than from home. This is not bias, but the proper application of section 23 of the Equality Act 2010 to the facts in this case.
7. The Claimants closing submissions were fully considered in so far as actually material.
8. In particular the claim of disability-related discrimination under section 15 of the Equality Act 2010 was given full consideration, and it was expressly agreed that this, unlike the section 13 direct discrimination complaint, does not require any comparator.
9. The fact of disability was not in dispute. Nor, for the purposes of this case was there any dispute that the Claimant's working from home was potentially something arising in consequence of disability in respect of the section 15 claim. The disability impact statement was not therefore relevant, and the Claimant never requested that he be allowed to read it out or indeed referred to it at all.

Employment Judge **Lancaster**

Date 9<sup>th</sup> March 2023