



EMPLOYMENT TRIBUNALS

Claimant: Miss J Mallinowski

Respondent: STB Limited
(trading as Surrey Translation Bureau) (1)
Mr G Cooke (2)

JUDGMENT

The claimant's application dated **8 February 2023** for reconsideration of the judgment sent to the parties on **2 February 2023** is refused.

REASONS

Application for reconsideration

1. The claimant states requests reconsideration for the following reasons:
 - a. a procedural matter relating to written submissions; and
 - b. the Tribunal's finding of facts on the evidence.
2. The application is refused as the Tribunal considers there is no reasonable prospect of the original decision being varied or revoked for the following reasons.

Written submissions

3. There is no prejudice to the claimant in the Tribunal accepting the respondent's written submissions after the deadline in the case management order. The reasons for accepting the submission after the date in the case management order dated 2 December 2022 are detailed at paragraphs 6, 13, 14 and 15 of the Judgment dated 25 January 2023. In

particular, the claimant is referred to paragraph 15: “As *both parties submitted written submissions late, each explaining why, we consider the parties are on an equal footing. We accept the claimant’s revised written submissions dated 23 December 2022 and the respondents’ written submissions dated 31 December 2023, received simultaneously by this Tribunal Panel on 5 January 2023.*”

4. In addressing this request for reconsideration, the Tribunal identified a typographical error at paragraph 15; the reference to 31 January 2023 should have been a reference to 31 December 2023. It is corrected in this quotation of paragraph 15 and will be corrected in the Judgment under rule 69. The claimant’s request for reconsideration does not turn on this typographical error. Indeed, this slippage should be apparent to all parties as the correct date of the submission is referenced in preceding paragraphs and the Judgment was issued on 25 January 2023; accordingly as a matter of chronological fact the Tribunal could not have considered submissions dated 31 January in any event. A copy of the Judgment with the typographical error amended will be sent to both parties.
5. The case management order dated 2 December 2022 did not order parties to reply to each other’s written submissions. Any right of reply would, in any event, be limited to points of law and not to further factual submissions. The respondent’s written submissions do not contain errors on points of law and a right of reply was neither ordered nor necessary in these circumstances.
6. The request for reconsideration relates to a procedural matter. The claimant does not raise any issues with the substantive findings of fact, conclusions, or Judgment. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is ‘*necessary in the interests of justice to do so*. The approach taken by the Tribunal to written submissions, as recorded in the Judgment, was in keeping with Rule 2, the overriding objective of the Employment Tribunals in that it dealt with this case fairly and justly, ensuring that the parties were on an equal footing in that the Tribunal received final written submission of both parties simultaneously and avoided delay to the Tribunal’s deliberation and issue of Judgment.
7. For these reasons it is not necessary in the interests of justice for the Judgment dated 25 January 2023 to be reconsidered. In circumstances where both parties had submitted written submissions, seen by the Tribunal simultaneously, and no right of reply to the written submissions was ordered for either party we consider there was fair balance, and finality of closing statements between the parties, and that the Tribunal’s approach was proportionate in the circumstances and in keeping with the overriding objective.

Findings of fact

8. The Tribunal has made clear findings of fact where parties versions of events differed by reference to the written and oral evidence. The reconsideration submissions by the claimant relate to findings of fact which have already been settled by the Tribunal. It refers to evidence that the claimant did not disclose during proceedings.

9. Accordingly, the claimant's application is rejected. In reaching this decision we have taken into account guidance on the finality of a decision highlighted by the Employment Appeals Tribunal in *Dafiaghor-Olomu v Community Integrated Care 2022 EAT 84* and that an application for reconsideration is not a method by which a disappointed party to proceedings can get a second bite of the cherry.

10. We have also considered *Outasight VB Ltd v Brown 2015 ICR D11, EAT*; Her Honour Judge Eady QC accepted that the wording '*necessary in the interests of justice*' in rule 70 allows Employment Tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. This discretion must be exercised judicially, '*which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation*'.

The remedy hearing for 15 May 2023 remains listed and parties are reminded to comply with the orders in the case management order 16 March 2023 in preparation for that hearing.

Employment Judge Hutchings

Date: 17 March 2023

JUDGMENT SENT TO THE PARTIES ON

27 March 2023

FOR THE TRIBUNAL OFFICE