



EMPLOYMENT TRIBUNALS

Claimant: Ms C Langtry

Respondent: Thomas Roofing (NW) Ltd

Judgment was sent to the parties on 6 January 2023. The judgment recorded a decision to strike out the claimant's claim. The claimant has made an application dated 18 January 2023 for reconsideration of that judgment.

JUDGMENT

The claimant's application is refused. The claim remains struck out.

REASONS

Background

1. This claim has a long procedural history and I do not repeat it here.
2. Very shortly, I struck out the claim following a two-day hearing in November 2022. I found that the claimant had engaged in a deliberate and elaborate deception in the pursuit of her claim. I found that she had pretended to hand a SanDisk SD card to Mr Daly, who had attended her home to collect an SD card for forensic analysis. The card she actually gave to Mr Daly was a blank Kingston SD card. She initially placed the SanDisk card in an opaque white envelope, but went back inside her house and secretly swapped the cards whilst Mr Daly could not see her. In reaching this conclusion I took account of previous instances where the claimant had claimed to have given important original evidence to professional representatives of the respondent, only for that evidence to go missing. The previous original evidence included a mobile phone and an allegedly-forged written contract of employment (which I called "the Disputed Document"). Having found that the claimant had switched the SD cards, I concluded that she had created the SD card and had forged the Disputed Document. In those circumstances, I took the view that a fair hearing was no longer possible and struck out her claim.
3. My reserved judgment to that effect was accompanied by written reasons ("Reasons").

4. The claimant has applied for reconsideration of that judgment. This is her third reconsideration application. At the same time, the claimant made an eighth application to strike out the respondent's response.
5. Her application, dated 18 January 2023, was accompanied by a 9-page appendix, and contained embedded links to three videos, two of which were new. I have read both documents and watched both the new videos.

Grounds for reconsideration

6. The reconsideration application is clear and well structured. It is divided into nine grounds for reconsideration, many of which are based on multiple distinct arguments.

7. I summarise the main points here:

Ground 1 – "SD Card Switch Dispute"

8. The claimant asks me to reconsider my finding that the claimant swapped the SD cards. Ground 1 engages in particular with my finding that the claimant had an opportunity to swap one white envelope for another whilst she was inside her house. I found that the claimant had such an opportunity whilst she was making a video on her phone. This finding was supported, in part, by my observation that there was "no visible footage for a few seconds". I went on to find that the claimant moved her phone so her camera would not record her picking up a second envelope.
9. The claimant now says that my observation was incorrect and my consequent finding unsustainable. She seeks to rely on a new video with added commentary in the form of captions. Her case is that the video demonstrates that the envelope was only out of view for just over one second, and that she would not have been able to swap envelopes in that time.

Ground 2 – "No-one could have swapped the SD Cards through the corner of the envelope without disturbing the seal"

10. The passage quoted in the heading of Ground 2 is taken from paragraph 61.2 of the Reasons. It is the claimant's case that that statement is factually incorrect.
11. The claimant relies on a new video showing a person removing an SD card from the white envelope without breaking the seal. This delicate operation is completed in approximately two minutes with the assistance of a pair of tweezers.

Ground 3 - Claimant is the SD card creator and withheld evidence and pretended to post mobile phone and documents & USB to Levin's Solicitors

12. In support of Ground 3, the claimant seeks to rely on two new pieces of evidence.
13. The first is a statement from Jacob Langtry, the claimant's son. In his statement, Jacob says he witnessed the claimant (his mother) wrapping her phone in bubble wrap, putting it into an envelope with a letter to Levins, giving the envelope to a member of staff at the Post Office and paying the postage.
14. The second is a screenshot of information apparently provided by Royal Mail. According to that screenshot, "Tom" at Royal Mail informed the claimant that, once an item has had postage applied to it and has been accepted for sending over the counter, it cannot be handed back or tampered with in any way.

Ground 4 – My witness Mr Plumbley

15. The claimant makes three essential points about my findings in connection with Mr Plumbley:

- 15.1. She wishes to rely on Jacob's new statement to prove that Mr Plumbley was present in the house when Mr Daly collected the SD card.
- 15.2. She asks me to reconsider my assessment of the reliability of Mr Plumbley's evidence. Mr Plumbley told me that he had communicated with the claimant using hand gestures instead of speaking to her out loud. I found that this would have been a strange thing for him to have done. The claimant says that this finding failed to take proper account of her hearing disability.
- 15.3. She says that I have confused her "lounge" (which she says she does not have) with her "living room area" and that had I not been confused in that way I would not have regarded Mr Plumbley's evidence as inconsistent with that of the claimant.

Ground 5 – Mr Daly's cropped video

16. The claimant alleged that one of Mr Daly's videos must have been edited to delete approximately two minutes of footage. In my Reasons at paragraph 58.1, I explained why I did not need to make a finding on the point. Part of my explanation was that the claimant could not think of anything that happened on video during that two-minute window that Mr Daly could have wanted to delete.

17. In Ground 5, the claimant has identified some events that might have been captured by the missing footage. These are:

- 17.1. a conversation about the claimant going back into the house, during which Mr Daly allegedly omitted to request to keep hold of the evidence bag; and
- 17.2. the claimant writing her email address on a form provided by Mr Daly.

Ground 6 - Judge Horne's finding that I am the creator of the SD card

18. The claimant wishes to rely on further details in images which she says were on the SD card placed in her mailbox. (These were the images screenshotted for the purpose of her second reconsideration application.) The claimant says that these details demonstrate that she could not have taken those images.

19. Another new piece of evidence is put forward in support of this ground of her application. The evidence takes the form of published material from Microsoft, purporting to show that meta data and file properties cannot be changed.

20. The remainder of Ground 6 appears to be a repeat of Ground 3.

Ground 7 – The "Doorstep SD card"

21. Reasons paragraph 39 uses the phrase, the "Doorstep SD card" to refer to a further SD card which the claimant also says was anonymously given to her.

22. In Ground 7, the claimant seeks to rely on new evidence from a witness, Mr Hollihead, who will apparently confirm that the claimant told him that she had discovered an SD card on her doorstep. Material on the Doorstep SD card includes an image of the Disputed Document tending to show that a printed copy of the Disputed Document existed on or soon after 24 May 2018. If that was correct, many of the reasons that I originally took into account when concluding that the Disputed Document was forged would fall away.

Ground 8 – Personal Comments to claimant by Judge Horne

23. In Ground 8, the claimant focuses on three comments:

- 23.1. that the claimant has shown herself to be highly skilled in using technology in support of the points she wishes to make (Reasons paragraph 100)
- 23.2. that the claimant is a tenacious researcher (same paragraph) and
- 23.3. an implied accusation that the claimant is anti-Semitic (Reasons paragraph 76.1).

24. The claimant contends that these comments were unfair and derogatory.

Ground 9 – Unconscious Bias

25. The claimant makes 15 points in support of her contention that my decision was influenced by unconscious bias. Broadly speaking, these points can be divided into two categories:

- 25.1. The claimant contends that I uncritically accepted various points made by counsel for the respondent, ignoring evidence to the contrary; and
- 25.2. The remarks I made (see Ground 8), together with my view of the reliability of Mr Plumbley's evidence about hand gestures, suggest that my conclusion was influenced by stereotypes.

Relevant law

26. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so". The making of reconsideration applications is governed by rule 71.

27. Rule 72(1) states that an employment judge must 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, the application must be refused.

28. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

29. The old Employment Tribunal Rules of Procedure 2004 required that judgments could be "reviewed", but only on one of a prescribed list of grounds. One of those grounds was that "new evidence [had become] available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time." This proviso reflected the well-known principle applicable to civil appeals derived from *Ladd v. Marshall* [1954] 3 All ER 745, CA.

30. The current 2013 Employment Tribunal Rules of Procedure replaced the old list of grounds with a single test: a judgment will be reconsidered where it is "necessary in the interests of justice to do so". There is no specific provision for fresh evidence. Nor is there any express prohibition a party relying on evidence about which he knew or ought to have known before the judgment was given. Nevertheless, the "interests of justice" test must, in my view, incorporate a strong

public interest in the finality of litigation, even if it is not as inflexible as the proviso in the 2004 Rules. Where a party could reasonably have been expected to rely on the evidence first time around, it would take a particularly good reason to give that party a fresh opportunity to rely on it.

Conclusions

Admissibility of new evidence

31. Many of the reconsideration grounds are based on new evidence. In order for that evidence to be admitted at reconsideration stage, the claimant would need to show that she could not reasonably have known of or foreseen its existence prior to the hearing in October 2023.
32. For the purposes of this preliminary consideration, I have assumed that the claimant has a reasonable prospect of overcoming that hurdle.
33. I take into account what the new evidence appears to show when deciding whether there is any reasonable prospect of my judgment being varied or revoked.

Ground 1

34. There is no reasonable prospect of the claimant being able to show that she had no opportunity to switch the SD cards.
35. I disagree that there is only (just over) a second where the envelope is out of view. The claimant's original video from inside the house contains approximately 13 seconds of footage (between 14 and 27 seconds into the video) where virtually nothing can be seen. The image consists of various shades of grey. That footage occurs between the claimant placing the SanDisk SD card into the envelope and her holding an identifiable white envelope. It all occurs before the first caption in the new video, which is at 37 seconds into the recording.
36. The claimant says that the video shows the camera being placed on top of the white envelope and staying there until the first caption. I do not think that the new video reliably shows that. When deciding whether to take the claimant's frame-by-frame analysis at face value, I also have to take into account all the other evidence in the case on the question of whether the claimant's digital evidence is reliable.
37. Moreover, even if the claimant's new video does show that the camera was on top of the envelope until the 37-second-mark, there is still a period of a second during which the claimant could have swapped the envelopes. It would only have taken a moment.

Ground 2

38. My statement at Reasons paragraph 61.2 should be viewed in its context. I was assessing the force of the claimant's point that it was suspicious that Ms Horler's photograph did not show the corner of the envelope. I concluded that there was no merit in it. My conclusion was influenced by my view that the seal would need to be have been broken before the SD card could be extracted from the envelope's corner. The claimant's new video shows that an SD card can be removed from the corner of an envelope without breaking the seal. But it does not take the claimant's argument any further. The tweezer method demonstrated in the video would leave no visible sign of interference at the corner of the envelope. The intact corner is unlikely to have appeared to Ms Horler to be sufficiently important that she should make sure it was included in the photograph. It might be said, I suppose, that Ms

Horler may have kept the corner out the photograph so as to hide the existence of a gap in the seal through which the SD card could theoretically have been extracted by a colleague armed with tweezers and bent on perverting the course of justice. I think that it is unlikely that such a thought ever crossed her mind.

39. The new video does not raise any reasonable prospect of my varying or revoking the judgment.

Ground 3

40. I do not think there is any reasonable prospect that Jacob's statement will cause me to alter my decision either. Any weight that I could place on Jacob's account of what happened in the Post Office would invariably be diminished by:

40.1. The passage of over 3.5 years between the trip to the Post Office and the making of his statement;

40.2. The risk that the claimant may have influenced what Jacob had to say;

40.3. The fact that Jacob appears to be describing a relatively uneventful trip to the Post Office on the way home from school;

40.4. The importance of precise detail about what the claimant did and in what order, the method by which she paid for the postage and the precise item that the claimant gave to the counter clerk;

40.5. The fact that this was one of three occasions where the claimant claimed to have sent original evidence that then went missing; and

40.6. All the other evidence relating to the phone, including my assessment of how unlikely it would be for Levins to have given the phone to Mr Thomas.

41. The screenshot from "Tom" at Royal Mail also falls a long way short of what would be needed to disturb my findings of fact. I do not make any additional findings now about what happened to the claimant's phone. The claimant may have paid the postage at a self-service machine, or asked the counter clerk for the package back at the last minute. There may be some other explanation. My finding would inevitably remain the same.

Ground 4

42. I did not make a finding about whether Mr Plumbley was in the house or not when Mr Daly collected the SD card. This was because, assuming in the claimant's favour that he was there, I did not find his evidence to be reliable in relation to whether the claimant had swapped the SD cards or not. I do not think that there is any real prospect of my finding Mr Plumbley's evidence more reliable on the basis of a witness who says that he was merely present in the house.

43. I was aware that the claimant had a hearing disability. I was aware of that fact when concluding that Mr Plumbley's account of making alleged hand-gestures was strange. I have seen many videos of the claimant communicating with others at various times since 2018. In all of these videos, her main method of communication was the spoken word. Mr Plumbley's account would have been more convincing if he had said he used hand gestures in addition to talking to the claimant, or mentioned her difficulties with hearing. He had already told me that he had "said" that he ought to be a witness to the SD card going into the envelope – a concept which most people would find easier to communicate by putting into words than by silent hand gestures.

44. The reliability of Mr Plumbley's evidence has nothing to do with the difference between a lounge and a living room.
45. There is no reasonable prospect that any re-appraisal of Mr Plumbley's evidence would cause me to find that the claimant had not swapped the SD cards.

Ground 5

46. The claimant has now suggested what Mr Daly may have been seeking to cover up by allegedly "cropping" 2 minutes of footage from his video. It amounts to two unremarkable features of their conversation. One is an omission by Mr Daly to ask to keep the evidence bag whilst the claimant went into the house. The respondent did not suggest that Mr Daly had made such a request. The fact that Mr Daly did not ask to keep the evidence bag is unsurprising: the bag was sealed and Mr Daly could not have known that the claimant was about to rip it open. The other thing that happened was the claimant writing her e-mail address on a form. I cannot see any reasonable prospect of my finding that Mr Daly would have tried to conceal those facts by editing video footage, still less any prospect that I would go on from those findings to conclude that Mr Daly had swapped the SD cards.

Ground 6

47. The difficulty with the claimant's next reconsideration ground is that it assumes that the screenshots appended to her second reconsideration application are of genuine images and reliable metadata. The purpose of analysing the SanDisk SD card was to establish the reliability of that evidence. Once I found that the claimant had swapped the SD cards, it was hard to resist the inference that she knew that the data on the SD card would not stand up to forensic analysis. That conclusion was supported by the factors I mentioned in my second reconsideration judgment. The points the claimant makes in Ground 6 do not raise any reasonable prospect of varying that finding.

Ground 7

48. My finding that the claimant had swapped the SD cards was, in my view, fatal to the reliability of any data on the Doorstep SD card. In any case, Mr Hollihead could say little more than that the claimant had told him that the Doorstep SD card was there. There is no reasonable prospect that his evidence would cause me to vary or revoke my judgment.

Ground 8 and Ground 9

49. I take Ground 8 and Ground 9 together. That is because the purpose of reconsideration is not to correct written reasons for a judgment, however derogatory a party may consider particular statements in those reasons to be. Reconsideration of written reasons can only proceed beyond rule 72(1) if there is a reasonable prospect that the decision itself could be varied or revoked.
50. I do not think there is any real possibility of my altering my view about the claimant's skill in using technology, or the extent to which she researches details about this case on the internet. This latest reconsideration application is supported by further digital evidence produced by the claimant (albeit with her son's help), together with the fruits of further online research.
51. I did not intend paragraph 76.1 of the Reasons to imply that the claimant is anti-Semitic. Rather, I was seeking to emphasise that the connection between Ms Ferrario and Cyfor unearthed by the claimant was not as shocking as she would

have had me believe. The claimant had told me that there was a conflict of interests between Cyfor and the respondent. She based this assertion, in part, on the likelihood that Ms Ferrario and a person from Cyfor had gone to the same synagogue. It was the claimant who brought up what kind of religion linked the two individuals. I thought it important to explain why that fact was irrelevant. Once the irrelevant detail was stripped away from the analysis, it was plain to see how innocuous the connection between Cyfor and the respondent really was. I am not going to change my view about that.

52. I did not accept the respondent's submissions uncritically. For example, I disagreed with the respondent about the significance of the conversation between the claimant, Mr Plumbley and Mr Daly at the time he returned the Kingston SD to the claimant (see Reasons paragraph 69). In the original judgment I found that the claimant was employed by the respondent, despite the respondent's submissions to the contrary. My revocation judgment was also in the claimant's favour.
53. The very nature of unconscious bias is that, if it did influence my decision, I would not have been aware of it. I attempted to guard against unconscious bias by consciously analysing the evidence in considerably more detail than would usually be proportionate. There is no reasonable prospect that I will decide that I was biased.
54. If the claimant still considers that the Reasons betray unconscious bias on my part, her remedy is an appeal to the Employment Appeal Tribunal.

Disposal

55. For the above reasons, the reconsideration application is refused.

Employment Judge Horne
27 April 2023

SENT TO THE PARTIES ON
27 April 2023

FOR THE TRIBUNAL OFFICE