



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms E James

West London Mental Health NHS Trust

JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made by email and letter of 25 March 2023 to reconsider the judgment sent to the parties in December 2021 and reasons having been sent to the parties on 11 March 2023 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application to reconsider is refused as there is no reasonable prospect of the judgment being varied or revoked.

REASONS

Introduction

1. The claimant's case for constructive unfair dismissal, sexual harassment and victimisation was heard by an employment tribunal in person and by CVP on 26, 29 and 30 November 2021 in line with the preliminary hearing in August 2018 where a list of issues had been drawn up and orders made.
2. Oral judgment was given on 30 November and the short judgment sent to the parties on 2 December 2021. It appears the claimant had asked for written reasons later that month but her email was overlooked by the tribunal office and reasons were not provided until after the claimant repeated her request towards the end of 2022. It then took some time for reasons to be provided as the hearing bundle of documents had to be sourced.
3. The claims were all unsuccessful. The claimant was not in attendance at the hearing and an explanation for how the hearing progressed in her absence is set out in the reasons between paragraphs 2-12.

4. In the letter where she applies for a reconsideration, she states that the decision was “*bias and/or perverse*”; that the tribunal was inconsistent in allowing one of two out of time claims to be heard and that there was an “*overall perverse conclusion based on the direct evidence*”. She goes on to state that the tribunal failed to consider all the evidence about disability discrimination (which was not a matter before the tribunal). She also said only 100 of 800 documents were referred to and that she had requested a postponement and was unable to cross examine the witnesses. She says she was unable to participate and therefore was deprived of the right to a fair hearing.

Rules

5. The relevant employment tribunal rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) 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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the

notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

6. In essence, my first task is to consider whether the application has been made in time. Although there have been delays in this case, it appears the claimant did ask for reasons within time and has applied for reconsideration within the 14 days after the reasons were sent to her.
7. I should then consider whether a reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

8. The hearing was listed to be heard in person. As stated in the reasons, the claimant had previously asked for a postponement which had been refused. She did not re-apply for a postponement on the first day of the hearing but merely said she could not attend. The respondent's representative and witnesses were present and the matter was ready for the hearing with an extensive bundle of documents and all witness statements, including that of the claimant. We offered the claimant the chance to attend by CVP but she did not reply nor did she attend.
9. The reconsideration application does not raise issues which would suggest a reconsideration is in the interests of justice. The hearing was an effective hearing with documentary and oral evidence. The tribunal asked questions of the respondent's witnesses, in part, at least, based on the claimant's evidence and what seemed necessary to determine the issues. The tribunal considered that evidence and came to its judgment after careful deliberations.
10. Nothing more said by the claimant in her letter indicates that it is in the interests of justice to re-open matters. She mentions bias and a perverse conclusion but provides no details of that allegation. She refers to a disability discrimination claim which was not before the tribunal. Whilst it was unfortunate that she did not attend, we did the best we could to

ensure her case was put to the respondent's witnesses. I must refuse this application as there is no reasonable prospect of the judgment being varied or revoked.

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Employment Judge Manley
South East Region

Dated 4 May 2023

Judgment sent to the parties on 4 May 2023

For Secretary of the Tribunals