EMPLOYMENT TRIBUNALS

Claimant:	**Mrs H Adams**
Respondent:	**Alliance healthcare Management Services Ltd**
Considered at:	Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG
On:	11 April 2023
Before:	Employment Judge Adkinson sitting alone
	Decided on the papers

JUDGMENT

The claimant's application for reconsideration of the judgment dated 28 February 2023 is refused because there is no reasonable prospect of the Tribunal varying or revoking that judgment.

REASONS

1. By an application dated 19 March 2023 the claimant sought reconsideration of the Tribunal's judgment dated 28 February 2023. It was sent to the parties on 6 March 2023. The application is therefore in time.

The application

2. The application runs to 5 pages. I have read the whole of the application.

3. The claimant's submissions are as follows (in very brief summary):

    3.1. The respondent made threats which caused her to behave the way she did;

    3.2. She disputes the Tribunal's conclusions she was "obstinate and obstructive", saying she was "defensive and direct";

    3.3. She does not accept our conclusion she had access to the intranet;

    3.4. She criticises our dismissal of her arguments about insurances;

    3.5. She alleges we made a number of assumptions throughout the case e.g. relating to provision of equipment for working from home and mentioning of her husband's illness;

3.6. She disputes the conclusions about face mask policy at the respondent, and information being emailed to them;

3.7. She asserts other information ought to have been included in relation to discussions on 4, 5 and 6 January;

3.8. She criticises the use of the words “request”, “instruction”, “demand” in the judgment suggesting this undermines the reasoning;

3.9. She assert the Tribunal is incorrect to record that her husband’s illness was the real reason she wanted to work from the office.

3.10. She criticises the conclusion that there was an emergency situation.

Reconsideration, process and the law

Reconsideration

4. **Rule 70** provides that a Tribunal can reconsider a judgment where it is necessary in the interests of justice to do so. I may confirm, revoke or vary the decision: **rule 70**.

Process

5. **Rule 71** allows the parties to apply for a Tribunal to reconsider its judgment. Nothing else turns on this rule.

6. The process I must follow is set out in **rule 72.** That provides:

“**72.— Process**

“(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.** …”.

7. It is imperative I go through this stage first: **TH White and Sons Ltd v White UKEAT/0022/21 EAT**.

Law

8. The following principles are in my view relevant to deciding if there is a prospect of success.

8.1. The words “necessary in the interests of justice” mean the Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, 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: **Outasight VB Ltd v Brown 2015 ICR D11 EAT**. See also **Flint v Eastern Electricity Board [1975] IRLR 277 QBD; Newcastle Upon Tyne City**

Council v Marsden [2010] ICR 743 EAT; Ministry of Justice v Burton [2016] ICR 1128 CA.

8.2. There is no need for exceptional circumstances: **Williams v Ferrosan Ltd [2004] IRLR 607 EAT**, and each decision is unique to its own facts. However the discretion must be exercised in accordance with recognised principles and judiciously: **Sodhexo Ltd v Gibbons [2005] IRLR 836 EAT**.

8.3. Though in reference to the old procedures, the EAT said in **Stevenson v Golden Wonder Ltd [1977] IRLR 474 EAT** that the reconsideration process is

“not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before”.

I see no reason why that principle does not apply to the current provisions either.

9. Because the reconsideration relates to our findings and conclusions, rather than to legal argument or new evidence, for example, I have reminded myself that I can expect our reasons to be read as a whole; a judgment is not obliged to identify every piece of evidence put before us; and there is no assumption we have not considered something or an argument simply because a particular piece of evidence has not been referred to, or specifically dealt with: **DPP Law Ltd v Greenberg [2021] IRLR 1016 CA**. The case relates to appeals and how appellate courts should approach appeals, but I see no reason why the same cannot be expected of parties seeking reconsideration of conclusions reached.

Conclusions

10. In a trial, the Tribunal considers all the evidence before it and applies such weight to such parts as its thinks reasonably appropriate. There is no rule that one cannot accept oral evidence because there are no ancillary documents, or one cannot make assumptions/draw inferences about facts justified on the evidence, or draw conclusions about what happened based on the evidence. There is no rule that the Tribunal is obliged to accept what a party, here the claimant, asserts without question.

11. I have considered the whole of the Tribunal’s judgment. Read as a whole I am satisfied that the judgment and reasons are clear to the reasonable reader. The use of the words request”, “instruction”, “demand” do not undermine the judgment when read as a whole. The other conclusions, in particular about her reason for not wanting to work at the office and that she was “obstinate” and “obstructive” are conclusions the Tribunal was entitled to reach. The Tribunal is entitled to draw reasonable inferences (whether they are called assumptions or otherwise) from the evidence and reasonably to prefer one party’s evidence over the other’s. I am satisfied that nothing in the claimant’s application shows that the Tribunal has reached a decision that it was not entitled to reach based on the evidence before it. The Tribunal has weighed up the evidence and reached factual conclusions open to it.

12. The application is in short no more than strong disagreement with the Tribunal's judgment and reasons. It is no more than an attempt to reargue the case with different emphasis on the evidence and arguments to persuade the Tribunal to change its mind. These are matters that could, and in many cases were, put before the Tribunal at the original hearing. Clearly the Tribunal did not agree.

13. Strong disagreement and a wish to reargue or re-emphasise particular points or to seek to persuade a Tribunal to change its mind are not good enough reasons to reconsider the judgment. The application can be dismissed for this reason alone. In any case nothing in the application suggests any reasonable prospect that the Tribunal would vary or revoke its judgment.

14. The Tribunal also notes that the claimant has had a fair opportunity to present her claim and evidence in support of it. There is a public interest in the finality of litigation. It is not fair that the respondent should be subjected to further expense to deal with the application which will not succeed. It would also cause delay to the determination of the remedy in this case to allow it to proceed which is not beneficial to either party. These too weigh against the reasonable prospect that the Tribunal will vary or revoke its decision.

Employment Judge Adkinson

Date: 11 April 2023

Notes

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