



EMPLOYMENT TRIBUNALS

Claimant: Ms A K Suniar
Respondent: Hounslow & Richmond Community Healthcare NHS Trust

JUDGMENT

Employment Tribunal Rule 70

The claimant's application dated 22 March 2023 for reconsideration of the judgment dated 23 February 2022 is refused.

REASONS

1. The procedural rules governing an application for reconsideration are set out in rules 70 – 73 of the Employment Tribunal Rules. The parts of the rules that are particularly relevant at this stage of the application are as follows (my underlining):

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.

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.

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. The Claimant made an application by email on 22 March 2023. I consider that the application was made correctly in accordance with Rule 71 of the Employment Tribunal Rules.
3. In addition to her letter of application the Claimant sent the Tribunal a number of documents, at least some of which had not been disclosed previously. Her application begins as follows:

‘Having thoroughly reflected on chronological events of my employment, the Employment Tribunal Hearing (ETH); and reading your written judgements – I have looked again at all the facts, information within the Bundle and believe I did not get justice for myself, and for anyone that has ‘Hidden Disabilities’. I believe it is in the interest of justice for the original decision to be reconsidered, and to please review the new evidence, which at the time was not provided, as I had not sufficiently looked far back into the Chronology of events in 2017, 2018, 2019.’

4. I have considered the Claimant’s application and the accompanying documents carefully. In my judgment there is no reasonable prospect of the original decision being varied or revoked, for the following reasons.
5. The Claimant’s application was set out in a 19 page submission. The first part of this submission appeared to be addressing the question of whether or not the Claimant had been disabled by reason of depression as well anxiety at the time of the matters that formed the subject of her tribunal claim. The Respondent in fact clarified that it accepted that the Claimant was disabled by reason of dyslexia, anxiety and depression and this issue was not therefore in dispute. The Tribunal’s written reasons assumed that the Claimant had been disabled by all three conditions and there is no need for any reconsideration on that account.
6. The remainder of the submission is based on the premise that the Claimant did not get justice for herself and others with hidden disabilities and, to some extent, on the presentation of new evidence. A party’s belief that justice has not been done is not a proper ground for reconsideration of a fully reasoned judgment. The party applying for reconsideration must show that something has gone wrong with the process by which that decision was reached such as a procedural mishap or the unavailability at the time of the full merits hearing of a document that would have affected the outcome.
7. It is not unusual for a party who has been unsuccessful to seek to reframe parts of the evidence given at the hearing in light of the conclusions that the Tribunal has reached. That appears to be what the Claimant is doing in her application. She argues at some length that Ms Johal ought to have foreseen that the Claimant’s mental health would decline in the role that she performed for the Respondent and that the adjustments that were made for her were not the right adjustments. The argument she puts forward therefore seems to me to be an attempt to reframe, in light of the Tribunal’s reasoned judgment, her unsuccessful claim that the Respondent failed to make reasonable adjustments. The issue of reasonable adjustments and whether the Respondent complied with the duty in ss20-21 Equality Act 2010 has been adjudicated by the Tribunal after an application of the legal

tests to the facts of the case as the Tribunal found them and full written reasons have been given. The role of the reconsideration process is not to allow an unsuccessful party to put their arguments a different way – the principle that there must be finality in litigation prevents this and the parties are expected to put their whole case forward at the full merits hearing.

8. It also seems that the Claimant may also be seeking to say that the Respondent breached its duty of care to her by not foreseeing the impact that the type of work it required her to do would have on a person with her disabilities. If that is her argument, it is not one that the Employment Tribunal has power to consider and is one that can only be decided in the civil courts.
9. I have considered the documents put forward by the Claimant with her application. I do not consider that any of these documents would have affected the conclusions that the Tribunal reached. A document should furthermore only be put before a Tribunal in support of a reconsideration application if it was not reasonably available before the hearing took place. The Claimant suggests that the contrary is the case in the first paragraph of her submission when she says “please review the new evidence, which at the time was not provided, as I had not sufficiently looked far back into the Chronology of events in 2017, 2018, 2019”.
10. In my judgment the Claimant has not established any grounds on which it would be in the interests of justice to vary or revoke the Tribunal’s judgment and the application for reconsideration is therefore refused.

Employment Judge **Morton**
Date 21 April 2023