Case No: 2411098/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mrs V Baker**

Respondent: **The Governing Body of St Charles RC Primary School**

JUDGMENT

The claimant's application dated 23 March 2023 for reconsideration of the reserved judgment sent to the parties on 10 March 2023 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in a 39-page document attached to an email dated 23 March 2023.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."**

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in her favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points she makes which should be addressed specifically.

Appointment of Governors

9. The Tribunal heard evidence re the appointment of the governors for the from Mr Matthews as chair of disciplinary panel and Ms Parkinson as clerk and Mrs Russell-Hayes as chair of appeal panel when giving oral evidence and being cross examined by the claimant's counsel confirmed that the panel had been correctly appointed.

10. Both Mr Matthews and Mrs Russell-Hayes gave evidence that they had answered the claimants' queries re appointment of governors for each of the hearings they chaired.

11.The Tribunal did not overlook the point on appointment of the govenors, it heard evidence on it from both parties and made the decision that it did not make the dismissal unfair.

Factual Inaccuracies

12. Many of the items mentioned in the application are irrelevant to the decision. The facts were taken from the evidence given at the hearing and documents referred to in the hearing. By way of example re paragraph 16, the number teachers being 26 was referred to by Ms McGonagle in her oral evidence to the

Tribunal. The number of pupils being 120 is contained in the closing submissions of the Respondent. At no time were these numbers challenged or contradicted by either the Claimant's representative or other witnesses.

13. By way of example, re paragraph 49 the Tribunal is recording the fact that the Chair of Governors asked the claimant to stay off sick, it is not stating that the Chair has the right to do this.

14. By way of example paragraph 60 the letter at page 468 of the bundle does refer to the allegations being stayed pending the outcome of the grievance, second sentence in the fourth paragraph.

15. By way of example, re paragraph 98 the witness statement of Ms MacGonagel mentions at para 16 and 17 that the claimant raises concerns and as a consequence new governors are appointed.

16. However, some of the factual inaccuracies identified by the claimant are correctly identified as such. By way of example the list of signatories can be seen page 384 of the bundle, but not all are legible. The list of witness statements of the signatories to the serious concern documents is listed at 4.2 of the Adverse Report page 397 and the claimant is correct as no E R Tindell exists and this is an error by my looking at the signatures of the serious concern document, it could be misread as E R Tindell when in fact now that it has been drawn to my attention is could be read as E Tricket. This is an error I accept alongside missing the names of Joanna Troughton and Diana Slater. However, such inaccuracies did not affect the decision made and are typographical errors.

17. By way of example, re paragraph 44, the judgment stated that Adverse Report was sent to the claimant on 23 March 2020 when the correct date was 23 October 2020. It is accepted that this is an error but has no bearing on the decision made.

18. Both the Claimant and the Respondent were legally represented throughout the hearing and given the opportunity to cross examine all witnesses. The hearing had been initially listed for two days which had not been disputed by either party. The Tribunal extended the length of the hearing to ensure that there was sufficient time given to both parties to present their case and cross examine the evidence as the Tribunal was very conscious of the seriousness of this case and the consequences of dismissal upon the claimant.

19. The claimant was intelligent and articulate and assisted the Tribunal by having been very thorough in the presentation of her case throughout. The hearing bundle provided her comments on minutes of meetings, queries raised during all stages of the process, and she also provided a comprehensive witness statement. This meant the Tribunal had no need to ask the claimant any questions.

Conclusion

20. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Dennehy

DATE 12 May 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON

22 May 2023

FOR THE TRIBUNAL OFFICE