



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE K ANDREWS
MEMBERS: Ms B Brown
Ms B Leverton

BETWEEN:

Ms J Simpson (deceased)

Claimant

and

Air Business Limited

Respondent

ON: 3 April 2023

Appearances:

For the Claimant: No attendance

For the Respondent: Miss H Williams

RECONSIDERATION JUDGMENT

1. The claimant's application (at paragraph 3 of her application dated 29 October 2019) for a reconsideration of the findings in the Judgment dated 11 September 2019 that:

1.1. her blameworthy conduct contributed to that dismissal and compensation will be reduced accordingly by 60%; and

1.2. the detriments (other than dismissal) were materially or significantly influenced by the protected act;

is refused.

REASONS

1. In this matter, following a hearing in May 2019, the Tribunal found that the claimant was unfairly dismissed but a contributory fault deduction of 60% would apply to any compensation awarded. The claim of victimisation was unsuccessful. A Judgment and reasons dated 11 September 2019 were sent to the parties on 15 October 2019. The claimant submitted a request for a reconsideration on 29 October 2019.

2. The power to reconsider is contained in rule 70 of the Employment Tribunal Rules 2013 which states:

A Tribunal may, either on its own initiative ... 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.

3. A reconsideration judgment dated 13 November 2019 was sent to the parties on 16 December 2019. The vast majority of the claimant's application was refused as there was no reasonable prospect of the original decision being varied or revoked but comments were invited from both parties (sequentially) on the matters raised at paragraph 3 of the application.
4. The respondent submitted a second witness statement by Ms Satterthwaite. No further comments were received from the claimant.
5. A second reconsideration hearing took place on 20 April 2021 where the claimant's application was refused save that we found if the claimant was right about the meaning of newly disclosed notes and their implication, that could at least potentially undermine the findings regarding contributory fault and any causal link between the other detriments and the protected act. Those questions were postponed to be dealt with at a further reconsideration hearing in July 2021 and the respondent was given the opportunity to file any further evidence in reply to the claimant's submissions. Provision was also made for the claimant to reply to any such further evidence.
6. A third witness statement from Ms Satterthwaite was submitted by the respondent. No further reply was received from the claimant.
7. Shortly before the intended hearing in July 2021 the claimant applied for a postponement due to health reasons which was granted. There then followed a series of postponement applications due to her health. It did appear, towards the end of 2021/early 2022, that her health was improving and it was hoped that she would be able to participate in a hearing. The Tribunal was however notified by the claimant in early 2022 that she was receiving treatment in a hospice. Very sadly the claimant died in February 2022 and we again offer our condolences to her family.
8. The Tribunal only became aware of the claimant's death in August 2022 when her brother, Mr Simpson, wrote to us. In correspondence with the claimant's family since then it has been established that her father would act as her personal representative but was content for the Tribunal to continue to make the outstanding decisions as they saw fit.
9. The substance of the claimant's application
10. In summary, the claimant said that handwritten notes of Ms Satterthwaite disclosed to her by the respondent following the liability hearing (in response to a subject access request) show that Ms Satterthwaite's evidence to the Tribunal that she had refused to disclose certain documents to the claimant during her employment out of a desire to help her move on was false. She said that these

notes show that Ms Satterthwaite's real reason for not disclosing those other documents was because she believed their disclosure may prejudice a potential Tribunal. In particular there was a note that read:

'Info officer re disclosure of docs that AB would block as it could prejudice a potential Tribunal'

11. The claimant said that this note reflected a decision by the respondent to block disclosure and therefore that the Tribunal reached its liability findings on a flawed understanding of the position as well as reflecting adversely on Ms Satterthwaite's credibility.

12. The respondent's reply

13. Ms Satterthwaite's written evidence dealt with:

13.1 the health reasons for her non-attendance at this hearing;

13.2 the reasons for non-disclosure of the notes during the Tribunal process;

13.3 her recollection of the meetings/calls they refer to; and

13.4 her interpretation of them (broadly that the particular comment in question was in fact that of the claimant's union representative, Mr White).

14. Conclusion

15. At this hearing the Tribunal's approach, in the absence of both the claimant and Ms Satterthwaite, has been to consider the following documents:

15.1 the original liability judgement;

15.2 the claimant's application for reconsideration;

15.3 Ms Satterthwaite's second and third witness statements;

15.4 our notes of the April 2021 hearing in particular by reference to submissions made by the claimant; and

15.5 the respondent's written submissions.

16. Having considered all those matters, we accept the explanation given by Ms Satterthwaite as to the reason for the late disclosure of the handwritten notes in question. We accept that this was not a deliberate omission on her part and that when she did find them, in response to a subject access request made after the liability hearing, she disclosed them. We are mindful that at that point a less honest witness could have made the decision to either destroy or simply ignore the notes and probably no one would have been able to challenge that. We have also taken into account the views we formed of Ms Satterthwaite during the liability hearing. Although we had criticisms of certain of her actions (and that is why the dismissal was, at least in part, found to be unfair) we did not at any stage find any malicious intent on the part of Ms Satterthwaite or any deliberately misleading or

inappropriate behaviour.

17. We also accept the explanation given by Ms Satterthwaite of the structure of the handwritten notes and the meaning of their contents. In particular we accept her evidence that the most likely explanation of the notes appearing at section 5, is that they are notes of her discussion with the claimant's trade union representative, Mr White, although she cannot be certain of the date of that discussion. We also accept her explanation that the most likely person to have made the comment about blocking disclosure was Mr White when he was relaying the claimant's position/views/concerns to Ms Satterthwaite. This explanation is in keeping with the list noted by Ms Satterthwaite which appears to be a list of points made on the claimant's behalf and which appear before and after the disputed note.
18. We also accept Ms Satterthwaite's position that her reason for not disclosing documents created or referred to in the grievance report – whilst the claimant was still employed - was in an attempt, whether misguided or otherwise, to encourage the claimant to draw a line under events that had happened and move forward (an approach encouraged by Mr White). This explanation is entirely in keeping with her actions during the course of the claimant's employment to try and achieve that same end. Also, we note that all the documents (apart from these handwritten notes) were disclosed in the Tribunal process and had no contents particularly damaging to the respondent's case.
19. Having come to that conclusion we agree with the respondent's submission that both the late disclosure of the notes generally and the specific note about blocking disclosure, have no relevance to the conclusions we reached in respect of the alleged detriments suffered by the claimant or our finding of 60% contributory fault. There is therefore no reasonable prospects of the judgment being varied or revoked in either respect.
20. The claimant's reconsideration application therefore fails.

Employment Judge Andrews
Date: 4 April 2023