



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Griffiths

**Respondent:** Whitbread Group plc

## DECISION ON RECONSIDERATION APPLICATION

The claimant's application for reconsideration of the judgment and reasons sent to the parties on 22 December 2022 (with corrected judgment and written reasons being sent on 13 January 2023) is refused.

### REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. Rule 71 of the Employment Tribunals Rules of Procedure 2013 ("ET Rules") requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The judgment and reasons were sent to the parties on 22 December 2022. The claimant submitted a request for reconsideration on 5 January 2023, so it has been made in time. The Tribunal sends its apologies to the claimant for the delay in dealing with her reconsideration application.
2. The grounds for reconsideration are set out in rule 72 (1) of the ET Rules: *"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. ..."*
3. The application for reconsideration appears to be made on the basis that the claimant:
  - a) Disputes findings of fact made by the Tribunal, contending that the Tribunal relied on hearsay evidence and did not accept her contentions on the respondent's alleged failures to comply with procedures, bonus terms and conducting a biased investigation.

- b) Alleges that the respondent failed to send her documents needed as evidence to support her case and had insufficient time to read the bundle in advance of the hearing; and
  - c) Refers to additional “new evidence”, namely an e mail sent relating to her non attendance at the disciplinary hearing, that if provided she states could have supported her case.
4. The hearing (held over 2 days for evidence and submissions, with judgment being provided in writing after) was the claimant’s opportunity to give information, ask questions and raise issues, which she did. She had the opportunity to advance all relevant arguments and make any relevant procedural applications. The Tribunal spent much of the first day of the hearing dealing with procedural matters much of which were raised by the claimant. At paragraph 5 of the Tribunal’s written judgment and reasons, there is a record of the issue of documents being raised by the claimant and addressed by the Tribunal. The claimant did not make any applications in relation to documents despite having the opportunity to do so. In relation to fact finding, all the evidence was considered carefully, the legal tests applied, and the decision and reasons provided to the parties. The allegations were fully explored. The Tribunal gave the issues full consideration and prepared its decision and reasons in detail. The claimant is, perhaps not surprisingly, unhappy with the outcome of the Tribunal as the decision was not in her favour.
5. With regard to the purported new evidence, the claimant does not explain why this was not presented to the Tribunal at the hearing. Moreover it is not clear why an e mail about the claimant’s non attendance at a disciplinary hearing would support her claim which was one for constructive unfair dismissal arising out of her resignation (not an express dismissal at a disciplinary hearing).
6. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters; it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined. A reconsideration is potentially a route for a party to raise new matters, but only where these are of direct relevance and have subsequently come to light after the hearing and where that party can explain why the matter was not raised before.
7. I have read through the application for reconsideration in detail. The claimant makes points about the findings of fact, and why she says that they were incorrect. However strongly the points are made, there is nothing in the application for reconsideration which indicates that it is in the interests of justice to re-open matters. The substance of the claimant’s application is to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings. The application is an attempt to re-litigate what was explored in detail at the hearing.
8. It a fundamental requirement of litigation that there is certainty and finality. If conclusions are disputed on a point of law, i.e. it a party can identify flaws in the legal reasoning of the original decision, they are matters for an appeal, not a reconsideration.

9. There is no clear reason given as to why it would be in the interests of justice to reconsider. I have therefore exercised my discretion to refuse the application for reconsideration as there is no reasonable prospect of the judgment being varied or revoked. The claimant's application for a reconsideration is therefore rejected.

Employment Judge Flood

16 June 2023