



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000053/2022

Employment Judge Jones

10 **Ms T Nelson**

**Claimant
In Person**

15 **City of Edinburgh Council**

**Respondent
Represented by:
Ms S Thomson**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal of 16 May 2023 is confirmed.

25 **Background**

1. The Tribunal issued a judgment dated 16 May 2023 that it did not have jurisdiction to consider the claimant's claim of sex discrimination because it had not been lodged in time and that in any event, had it exercised its discretion to consider the claim, it would have dismissed the claim.
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2. The claimant made a request that the judgment be reconsidered by email of 17 May. She provided a text message exchange and emails in support of the application. She indicated that she had 'found' the Whatsapp message exchange on her phone and had only received the emails after the conclusion
35 of the Tribunal proceedings following a subject access request.
3. The claimant then sent a further email that day elaborating on why she said the emails provided were relevant.

4. The claimant was advised by letter dated 18 May that the application had not been refused. Parties were invited to comment on whether a hearing was required to consider the matter.
5. The respondent provided a response to the application by email dated 24 May. The respondent's position was that the claimant's reasoning for her application was unclear and that she had failed to provide any clear reason why it was in the interests of justice for the judgment to be reconsidered. No reference had been made to any particular paragraphs of the judgment which the claimant suggested should be reconsidered. It was also said that the material provided was not relevant to the claimant's claim. In addition, there was nothing in the material provided which addressed the Tribunal's judgment that the claim was out of time.
6. The claimant then sent a further email dated 25 May, in which she appeared to make allegations against the respondent's solicitor of fraud and perjury and alleging defamation. The claimant went on to suggest that the information previously provided should be taken into account.
7. The claimant sent a further email dated 29 May which she asked to be taken into account which appeared to relate to events which occurred after the Tribunal proceedings had concluded relating to her sickness absence and did not relate to the matters which were determined by the Tribunal.
8. Parties were then informed that the matter would be determined on the basis of written submissions and any additional representations either party wished to be taken into account should be provided within 7 days thereafter.
9. The respondent wrote on 1 June, although that email was putting the claimant on notice that if she persisted in making serious and unfounded allegations against the respondent's solicitor an application for expenses may be made.
10. The claimant then sent a further email on 6 June alleging that Mr Calder was not a reliable witness, that he had committed fraud and was not an honest witness. At the same time the claimant submitted a bundle of documents running to 588 pages without any explanation as to what these documents were or why they were relevant to the claimant's reconsideration application. The email raised other matters which related to claims which had been struck out in a previous judgment.

11. The claimant was informed that she was required to set out clearly in a short-written submission what aspect of the judgment should be reconsidered, why it was in the interests of justice to reconsider the judgment and if she relied on documentation in that regard she should refer to the documentation and explain why it was not placed before the Tribunal at the original hearing.
12. The respondent then wrote by email of 8 June submitting that the documents provided by the claimant were irrelevant and did not address the issues of jurisdiction or discrimination.
13. The claimant sent a further email on 8 June. While the terms of the email were somewhat difficult to follow, it appeared that the claimant was inviting the Tribunal to find that Mr Calder was not a credible witness.
14. A further email was sent by the claimant on 6 July regarding a sickness absence meeting the claimant was being asked to attend by the respondent.

15 **Discussion and decision**

15. While the Tribunal was not satisfied that the claimant had set out in any succinct or coherent manner the basis on which her application was being made, the Tribunal determined the matter on the basis of what written representations which had been provided. The Tribunal did not make reference or take into account the 588 pages provided by the claimant but did consider the text exchange and emails provided on 17 May.
16. The Tribunal proceeded on the basis that the claimant was alleging that information provided demonstrated that Mr Calder's evidence should not have been relied upon.
17. Rule 70 in Schedule 1 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that a judgment may be reconsidered if it is necessary in the interests of justice.
18. It is a matter of public policy that there should be finality in litigation and therefore a Tribunal should reconsider a judgment which has been promulgated in limited exceptional circumstances.
19. An application for reconsideration is not, as the respondent points out, an opportunity for a disappointed litigant to reopen matters.

20. Her Honour Judge Eady QC highlighted in **Outasight VB Ltd v Brown 2015 ICR D11 EAT**, that while the interests of justice provides Tribunals with a broad discretion, that 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.”
21. In the present case, the claimant has not put forward any argument or information as to why it would be in the interests of justice for the judgment to be reconsidered.
22. It would appear that the claimant is only seeking reconsideration of the finding that even if the Tribunal had determined that it had jurisdiction to consider her claim, it would not have dismissed the claim.
23. The Tribunal found that it did not have jurisdiction to consider her claim of sex discrimination, because it had not been lodged timeously, and there was no information provided which persuaded the Tribunal that it would be just and equitable to consider the claim. The claimant does not appear to be asking for the Tribunal to reconsider that aspect of the judgment. No information has been provided which relates to those findings and the Tribunal is satisfied that the decision regarding jurisdiction should be confirmed.
24. In so far as the claimant is seeking a reconsideration of the finding that she was not subjected to sex discrimination, that application is refused. The information provided by the claimant in terms of the Whatsapp messages could have been provided at the time of the hearing. The claimant suggests it was not provided because of the stress the claimant was under. The Tribunal does not accept that as a valid reason given that the claimant provided a large amount of documentation which was not even referred to at the final hearing. In any event, the content of the messages is not relevant to the issues determined by the Tribunal. The exchange simply appears to be between the claimant and a colleague complaining in somewhat colourful language about their colleagues.
25. The email exchange is also of no relevance. While the Tribunal accepts that this information may not have been available at the final hearing, it does not appear to be in any way relevant to the issues which were determined. The

Tribunal found that the claimant had not established that she had been treated less favourably. The email exchange is not relevant to that matter.

26. Finally, the Tribunal found that the claimant had not demonstrated that she had been treated less favourably than other employees. The Tribunal found that the claimant had speculated as to who had asked for and been granted leave and that her evidence was confusing and contradictory, and therefore she had not demonstrated that she had been treated less favourably. It was the claimant's evidence which the Tribunal found to be unreliable and confusing. The evidence of Mr Calder was not relevant to that finding.

27. The Tribunal would observe that making sweeping allegations that a witness is not honest or reliable after the conclusion of a hearing is unlikely to persuade a Tribunal that it is in the interests of justice to reconsider its judgment. It is also a serious matter to make such allegations. The claimant alleged that Mr Calder (and obliquely the respondent's solicitor) had committed perjury. Those are very serious allegations to make particularly against a solicitor which is a regulated profession and where the solicitor did not give evidence and so could not be guilty of perjury. The conduct of the claimant in that respect is entirely unreasonable. The Tribunal is mindful that the claimant is an unrepresented litigant. However, that does not mean that she can make serious allegations against solicitors and witnesses who have given evidence under oath without foundation. All parties, represented or not, are required to have regard to the Tribunal rules of procedure and the consequences of not following those rules.

28. Therefore, the Tribunal is satisfied that it is not in the interests of justice to vary or revoke any aspect of its original judgment.

29. The claimant's application for reconsideration is therefore refused and the terms of the original judgment of 16 May 2023 are confirmed.

Employment Judge: A Jones
Date of Judgment: 07 July 2023
Entered in register: 10 July 2023
and copied to parties