Case No: 2207464/21

EMPLOYMENT TRIBUNALS

Claimant: **Dr S Talsania**

Respondent: **BUPA Occupational Health Limited**

JUDGMENT

The Claimant's application for a reconsideration of the Judgment sent to the parties on 5th April 2023 is refused under Rule 72 of the Employment Tribunals Rules of Procedure. There are no reasonable prospects of the Judgment being varied or revoked.

REASONS

1. By letter dated 19 April 2023 those acting for the Claimant asked for a reconsideration of paragraphs 66, 51,68 and 94 of the written reasons for our Judgment. The Claimant says that there are a number of factual errors in the reasons that the Tribunal is asked to address which led unfairness to such an extent that is in the interests of justice that these are corrected. She refers to paragraphs 66, 51, 68, 94.

2. By letter dated 19 May 2023, I stated that my provisional view was that the application should proceed with respect to paragraphs 66 and 51 of the Judgment. I sought the views of the Respondent as to whether the Judgment should be reconsidered and the views of both parties as to whether the reconsideration could proceed without a hearing.

3. The Respondent replied by letter dated 24th May 2023 and submitted that it was not appropriate for the Judgment to be reconsidered. The application was directed to correcting "possible errors" in the Judgment none of which were capable of disturbing the Judgment itself. Having considered those further submissions I am of the view that there are no grounds for a reconsideration.

4. Under Rule 70 of the Employment Tribunal Rules of Procedure 2013 a Tribunal "may reconsider any judgment where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

5. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

6. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds. These were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in Outasight VB Ltd v Brown UKEAT/0253/14/LA that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review). It is not a means by which a disappointed litigant can have another bite at the cherry.

7. In Ameyaw v PricewaterhouseCoopers Services Ltd EAT 0291/19 the EAT held that an application for reconsideration is not a vehicle for challenging a tribunal's reasons or, insofar as they do not form part of the essential reasoning upon which the decision is based, other things said by the Tribunal in arriving at its decision. A Judgment cannot be reopened simply to address alleged errors in the Tribunal's reasoning. In AB v Home Office EAT 0363/13 the Employment Appeal Tribunal held that there is a distinction to be drawn between overlooking an issue and deciding an issue and giving reasons for it which are inadequate or incomplete. If a Tribunal has decided the issue and the reasons were incomplete or inadequate, but there were no reasonable prospects of the judgment being varied or revoked, a reconsideration was not appropriate.

8. In relation to paragraph 66, the majority of the Tribunal accepts that, in answers in cross examination, the Claimant did refer the Clinical director as being the next appropriate person to go to, and that Claimant's answers in cross examination have not been accurately recorded. EJ Spencer is grateful to Mr Robinson who had a fuller note of the hearing than she did. The majority also accept that this would indicate, at least by implication even if the Claimant did not say so in terms, that the Claimant was following the correct procedures in going to Dr Powles. We accept that on that basis the comment at the start of paragraph 66 is based on a misunderstanding of what the Claimant said.

9. However, the majority's incorrect finding that the Claimant did not use the correct reporting lines did not form part of the essential reasoning on which the majority decision, that the Claimant made no protected disclosure to Dr Powles, was based. Nor does it change or impact its views that Claimant was not subjected to detriment or dismissed because of any disclosures, or the conclusion in paragraph 110. For that reason it is not an appropriate ground for a reconsideration.

10. In relation to paragraph 51 the majority accept that it misunderstood the

note at page 592 of the bundle; and that the reference in the HR log to the call of 25th May was to a call between Dr Rogers and HR, and not to a call between the Claimant and HR.

11. The Respondent says that the note records Dr Roger's account of what the Claimant had said to her. The Claimant says the notes record a conversation between her and Mr Andrews in which the Claimant said that the doctors in the Claimant's team were not producing notes to the standard that the managers wanted. However, assuming that the Claimant is correct, this would not affect the essential reasoning of the majority that it was the Respondent's genuine view that the Claimant was not performing and that she was not dismissed or subjected to detriments because she had made disclosures.. The crux of the majority's reasoning was that she had not made any disclosures and, even if she had, the concerns about the Claimant's performance predated any alleged disclosures, so that she was not dismissed or subjected to detriments because of any alleged disclosures. The Claimant's own views of her performance were not relevant to the issues to be decided There is no prospect that a revision to this factual finding would alter the outcome of the decision.

12. The Claimant's contentions as to paragraph 68 amount to additional submissions made after the case has concluded and are not an appropriate ground for a reconsideration. In relation to paragraph 94 the Tribunal has made its findings of fact and it not for the Claimant to ask for additional findings to be made after the event.

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Employment Judge F Spencer
13 July 2023

JUDGMENT SENT TO THE PARTIES ON

13/07/2023

FOR THE TRIBUNAL OFFICE