



EMPLOYMENT TRIBUNALS

Claimant: Miss Rose Southam

Respondent: Berkshire Healthcare NHS Foundation Trust

Before: Employment Judge Gumbiti-Zimuto
Members: Mr A Kapur and Ms B Osborne

JUDGMENT

1. The claimant's application for a reconsideration (18 June 2023) is refused. There is no reasonable prospect of the decision being varied or revoked.
2. Upon reconsideration of the Judgment pursuant to the respondent's application (20 June 2023) the Judgment is confirmed.

REASONS

1. The parties separately made applications for a reconsideration of the judgment of the Tribunal sent to the parties on 6 June 2023. The Tribunal has considered the parties representations and did not consider it necessary to reconvene the hearing to address the issues raised. The claimant's application is made in an email dated 18 June 2023. The respondent's application is made in an email dated 20 June 2023.

The claimant's application

2. The claimant's application for reconsideration is lengthy. The claimant's application is in part a submission which attempts to reargue the claimant's case and also alternately is a statement of a legion of criticisms of the Tribunal that heard the case and the employment tribunal's administration of the claim.
3. The claimant contends that the Tribunal came to incorrect conclusions of the facts, failed to make findings of fact, failed to critically examine the respondent's explanations for matters, failed to engage with reasons put forward, that there were conclusions made which were unsupported by the evidence. The claimant makes numerous references to the Tribunal, making errors of law and not considering or not referring to listed

authorities. The claimant makes various complaints about the case management of the claimant's claim, the failure to issue witness orders, not replying to correspondence, and that there was incompetence in the employment tribunal's handling of her claim by various Judges. The claimant in her reconsideration application makes complaints about decisions which were made by others who are not the Tribunal that heard her case.

4. This lengthy document is essentially a rearguing of the case with a view to getting to the Tribunal to change its mind about the decision.
5. Having considered all the points made by the claimant we do not consider that there are any grounds disclosed that indicate to us that in the interests of justice we should vary or revoke our decision, there is no reasonable prospect of the original decision being varied or revoked.

The claimant's application

6. In its application the respondent states that there was a failure to make findings on PD18, PD19 and PD20. The Tribunal note that there was a failure to set out our conclusions in this respect. The Tribunal had concluded that the claimant made a protected disclosures as alleged in PD18 but did not conclude that there was a protected disclosure at PD19 and PD20. We came to these conclusions for the following reasons.
7. PD18: *Concerning a specific patient safety concern (patient AJ) in an email from the claimant sent on 01/02/2019 at 1:37 to EW. [PD18] [s43B(1) (b) and (d)].*
8. The respondent says that this was not a protected disclosure. In submissions the respondent stated:

“In relation to PD 18 (patient AJ to EW), this communication took place on 1 February 2019 [862, 860-861] the Claimant did not put to EW that this communication amounted to a protected disclosure or that it had a material influence on anything that the Claimant was subjected to. EW's evidence was that she understood it to be about the Claimant's disagreement that she should be asked to contact a patient (which is not a public interest disclosure). EW suggested that the Claimant contact GG.”
9. The Tribunal is satisfied that this was a protected disclosure the claimant did make a disclosure of information tending to show that the health or safety of AJ was being endangered. The claimant stated in her email that, *“This poor lady is 83 who has had a hip replacement and being asked to chase up services and ask why she can't have reablement clinicians do not want to speak to her directly.”*

10. The claimant goes on to state that “The Employment Tribunal did not consider and failed to refer to the protected disclosure connected to this detriment.” The claimant points to D23 which is linked to PD18. The claimant referred to her witness statement at paragraph 71 which in turn referred to the email of 01/02/2019. The claimant goes on to point out that in an email to Mr Guggilapu, the Guardian, Miss Williams, referred to the concern raised by the claimant in the email. The claimant goes on to state that the Tribunal accepted uncritically, a reason advanced by the respondent for the detrimental action and failed to make further inquiry, additionally the claimant says that the Tribunal failed to refer itself to the *Fecitt* test “material influence test”. By the *Fecitt* test we understand the claimant to refer to the guidance that section 47B will be infringed if the protected disclosure materially influences, being more than a trivial influence in the employer's treatment of the whistleblower.
11. In our judgment we accepted the evidence given by Mr Layelle for his failure to respond to the claimant's email. The claimant is critical of the Tribunal conclusion on this point. Notwithstanding the various points raised by the claimant which in effect reargue the claimant's case we do not consider that the conclusion of fact reached in respect of D23 is wrong.
12. The Tribunal has considered whether it can be shown that there is a suggestion of the claimant being subjected to a detriment because of the claimant having made PD 18. We do not consider that the claimant has shown evidence of a link between the claimant's protected disclosure and the claimant being subject to any detriment.
13. PD19: *Under EW's instructions to discuss matters with GG, in a meeting with GG on the 05/02/2019 (patient AJ) [PD19] [s43B(1) (b) (d) and [f].*
14. Elaine Williams explains that on 1 February 2019, the claimant emailed her a 'raising a concern record sheet' which she had completed setting out her concerns regarding the care of an elderly patient AJ. As a result Elaine Williams replied and asked if the claimant could speak to her line manager, Mr Guggilapu. The claimant spoke with Mr Guggilapu on 5 February 2019. One of the matters discussed was the claimant's concerns around AJ.
15. Speaking of this meeting the claimant says:

“73.2 This discussion with GG was to give GG a background of what had taken place and make him aware that the patient's GP was not happy that he had referred the patient twice, and each time the referral had been rejected by the Clinicians without explanation.

...

73.4 The patient's GP said to the Claimant that he was going to make a formal complaint on behalf of the patient. This conversation was recorded on the patients progress notes.

73.5 In reporting this to GG, the Claimant was taking the correct action of a conscientious and loyal employee in keeping her line Manager fully informed to enable him to take the appropriate actions, I was also following EW 's instructions to discuss with GG.”

In his recollection of this meeting Mr Guggilapu states:

“That in connection with a Domiciliary Physiotherapy client she was unhappy that she had been asked to contact the client to let them know that their referral for community physiotherapy had been refused and that clinicians had refused to do so. The Claimant said that the GP had been provided with the details of the Trust’s Chief Executive to complain [PD19]. The Claimant provided me with the details of the patient and I committed to follow up with the team and to check with Amber Hirons (Physiotherapist) whether the team could send a physiotherapist to the patient.”

16. The Tribunal did not conclude that the evidence of this meeting allowed for a conclusion that there amounted to a protected disclosure in the exchange between the claimant and Mr Guggilapu. As the claimant said, “This discussion with GG was to give GG a background of what had taken place and make him aware that the patient’s GP was not happy that he had referred the patient twice, and each time the referral had been rejected by the Clinicians without explanation.” Mr Guggilapu says, “The Claimant said that the GP had been provided with the details of the Trust’s Chief Executive to complain.”
17. PD20: *Reference to all the Protected Disclosures made to GG, EW, MS and the National Guardians Office in an email sent by the Claimant on 06/02/2019 at 16:29 to GG copying in EW [PD20] s43B(1)(a),(b), (c) and (d).*
18. The email on 6 February 2019 does not amount to a protected disclosure it is a statement by the claimant about her position and attitude toward the respondent. The respondent points out that the only specific issue referred to is about patient AJ but there is insufficient detail on any matter to form the basis of a reasonable belief that it tends to show any of the matters in section 43B(1)(a to f).

Correction of the judgment

19. In paragraph 191 of the judgment the Tribunal referred to D16, D17, and D18. There should also have been reference made to D15 which arises from the same sequence. Paragraph 191 of the Judgment should read:

“In respect of the issues raised in **D15**, D16, D17, D18 arising from activity on 6 February 2019 we do not consider that they reveal any detriment nor do they in our

view amount to a breach of contract by the respondent where considered individually or as a composite.”

Employment Judge Gumbiti-Zimuto

Date: 31 July 2023

Sent to the parties on: . 2 August 2023..

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For the Tribunals Office

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