



EMPLOYMENT TRIBUNALS

Claimant: Ms G Kekati

Respondent: Skinfluencer Ltd

**London Central
Employment Judge Goodman**

3 August 2023

ORDER

The claimant's application dated 26 July 2023 for reconsideration is dismissed because it has no reasonable prospects of success.

REASONS

1. The claimant's claims for protected public interest detriment and dismissal, and claims for unfair dismissal and money due were heard by a panel in April 2023 and judgment was reserved. Judgment and written reasons were sent to the parties on 17 July 2023. None of the claims succeeded. The claimant has no applied for reconsideration of the judgment.

Relevant Law

2. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 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.
3. 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.

4. 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, which 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. **Ladd v Marshall (1954) EWCA Civ 1** set out the principles on which evidence could be admitted after the judgment: it could not have been obtained with reasonable diligence before the hearing; it would have an important influence on the outcome; the evidence was apparently credible. 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); the ET will generally apply the **Ladd v Marshall** criteria, although there is a residual discretion to permit further evidence not strictly meeting those criteria to be adduced if for a particular reason it is in the interests of justice to do so.
5. When making decisions about claims the tribunal must have regard to the overriding objective in rule 2 of the 2013 regulations, to deal with cases fairly and justly, which includes ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, and seeking expense.

Discussion and Conclusion

6. The claimant says that the interest of justice require reconsideration because the hearing bundle was disordered and some material had been omitted. She also did not have an opportunity to submit evidence of DP drinking at work in the period before he left in June 2021. Nor could she submit evidence that damage to equipment was caused by a new employee in the autumn of 2021.
7. The bundle was largely complete at the time of the hearing first listed in June 2022. The claimant had then engaged a solicitor who was not able to attend then, but who was confirmed to be on record in October 2022. From then until the hearing in April 2022 the claimant could have produced documents she wished to add to the bundle or compiled her own supplementary bundle. She has not explained why any defect she identified could not have been put right in that time, or even at the start of the final hearing. It is important that judgments are wherever possible final, based on evidence the parties have been able to submit. The claimant does not explain why it is in the interest of justice to reopen this with new evidence and rerun the hearing.
8. As for new evidence, witness statements were prepared for the July 2022 hearing and as the final decision explains the claimant had submitted two more witness statements after that. She could have set out her evidence about DP having a verbal warning or about the cause

of damage to equipment then or in the hearing but did not. In any case, she does not say how the respondent did or could know about the cause of the damage when she would not engage with their investigation of the damage.

9. The claimant complains that a photograph of her hair loss was omitted from the bundle. It seems it could have been before the tribunal. This would only have been relevant to assessing the amount to be awarded as remedy had the claim succeeded. It is not a reason for reopening the question of whether the claims should succeed.
10. There is complaint that a document about commissionable earnings was omitted from the bundle. The claimant does not say why she does not mention this document in any of her witness statements or complain in the hearing that it had been left out. It was always plain what the issue was. It is not in the interests of justice to reopen the issue now.
11. I conclude that the claimant has shown no good reason for reopening the case by reconsidering the judgment. The application for reconsideration has no reasonable prospect of success and is therefore dismissed.

Employment Judge GOODMAN

Date 3rd August 2023

JUDGMENT SENT TO THE PARTIES ON

03/08/2023

FOR THE TRIBUNAL OFFICE