Case No: 2200854/23

EMPLOYMENT TRIBUNALS

Claimant	and	Respondent
Ms W Xie		**E'Quipe Japan Limited**

DECISION ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the Preliminary Hearing judgment dated 13 August 2023, the application to reconsider the strike out is refused under Rule 72(1) as there is no reasonable prospect of the decision being varied or revoked.

REASONS

Introduction

1. The background to the Claimant's claim and history of the proceedings (including the conduct of the Preliminary Hearing (PH) on 14 July 2023) is set out in the Judgment of 13 August 2023, and accordingly it is not necessary to repeat the details here.

Application for reconsideration

2. By email dated 18 July 2023, the Claimant submitted a written request for reconsideration of that decision. The Claimant relies on what she refers to as "several misunderstandings" and says that she would like to add some further details to what she has already said.

3. **Rules**

The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

70. Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72. Process

(1) 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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

4. The Tribunal's task at this stage is therefore to consider whether reconsideration of the decision of 13 August 2023 is in the interests of justice. If it considers there is no reasonable prospect of the decision being varied or revoked, under Rule 72(1), the application shall accordingly be refused.

Conclusions

5. This reconsideration application was considered at the initial (Rule 72(1)) stage on the papers. It was not considered necessary to seek the Respondent's response thereto. The Claimant's application merely seeks to re-argue matters which have already been considered and determined by the Tribunal.

6. The Claimant's basis for claiming race discrimination has always been unclear. For that reason, on 31 March 2023, EJ Stewart gave the Claimant the opportunity to supplement what she had said in her claim form by submitting further details. The Claimant was ordered to do so by 2 June 2023 and it was expressly stated that this was a longer period than normal to enable the Claimant to complete her examinations and take professional advice. The Claimant complied on 8 June 2023 with a "statement" running to six pages. It is that document, read in conjunction with the claim form, that was the basis of the decision to strike out the claim in its entirety because none of the complaints within it stood any reasonable prospect of success.

7. The Claimant contends in the "statement" that on 22 October 2022, she was subject to discrimination by two customers of Harrods. She appears to have conflated the nationality of those customers (and her understanding of the nationality of Harrods' owners), i.e. Arabic, as being the underlying reason for what she perceives as less favourable or unfavourable treatment by the Respondent towards her. In the "statement", all the complaints about Ms Tisca's conduct were said by the Claimant to be "because I am Chinese and I made a complaint against Arabic customers". There is however no causal nexus between those two events.

8. Similarly, in relation to Ms Begum deciding that the Claimant had failed the Gankin massage test, the Claimant again says, "I, identified as a Chinese individual, made a complaint against Arabic customers, resulting in me losing my job, by failing my probation test on purpose". Again, there is no causal nexus between race and Ms Begum's decision to fail the Claimant in her probation.

9. The Claimant now seeks to add comments about the working relationship between Ms Isca and Ms Begum that were not in the original claim or the "statement" and were not even raised at the Preliminary Hearing and thus cannot be accepted as part of the reconsideration.

10. In her application for reconsideration, the Claimant says that the ownership of Harrods is not the only reason/evidence for her claim but that it is one of the reasons. I concluded in my Preliminary Hearing Judgment that that assertion would face very significant challenges because the ownership of Harrods (and the nationality of the customers involved) appear to have no relevance to the way in which the Claimant was treated by the Respondent.

11. At the PH and in her application for reconsideration, the Claimant has sought to add complaints of an "anti-Chinese" culture at the Respondent. As I found in the PH judgment, these complaints were not made either in the claim form or in the "statement" of 8 June 2023.

12. The Claimant then repeats (at page 4 of the reconsideration application) that her grounds for believing the reason why Ms Isca treated her less favourably are 1) that Harrods is owned by Arabs and 2) there is an anti-Chinese culture within the Respondent. She argues later that the true reason she was dismissed was that she was "racially discriminated against". There was however nothing before the Tribunal to support the assertion that race was the

reason for any less favourable treatment to which the Claimant was subjected by the Respondent. The reconsideration application merely seeks to reargue these points. The Claimant now takes issue with some of the points argued in the Respondent's defence, but even if those are treated as disputed facts, the point remains that this claim amounts to several complaints of a difference in status (between the Harrods customers/owners) and a perceived difference in treatment of the Claimant by the Respondent.

13. In all the circumstances, there is nothing in what is said by the Claimant which indicates that it is in the interests of justice to re-open matters. I did consider whether it would be just to make a deposit order, but that would require the complaints, or any of them to stand "little" rather than "no" reasonable prospect of success. The reason for not making a deposit order was not that the Claimant said she could not afford to pay one. My conclusion was that the claim stood no reasonable prospect. An "unless" order was not appropriate at all.

14. This application is refused as there is no reasonable prospect of the decision being varied or revoked.

15. The Claimant is reminded that the Employment Tribunal is unable to extend the deadline for lodging an appeal to the EAT, which is a separate process from this reconsideration decision.

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Employment Judge Norris
Date: 26 August 2023

JUDGMENT SENT TO THE PARTIES ON

26/08/2023

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FOR THE TRIBUNAL OFFICE