



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4102824/2016 and others**

**Held in chambers on 3 August 2023**

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**Employment Judge McFatridge**

**Mrs Y Allan and others**

**Claimants**

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**Fife Council**

**Respondent**

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**NOTE OF INITIAL CONSIDERATION OF APPLICATION FOR  
RECONSIDERATION**

1. On 7 July 2023 the Tribunal issued its judgment in the above case. On  
25 21 July 2023 the respondent sought a reconsideration in terms of Rule 71.

2. Rule 72(1) of the Employment Tribunals (Constitution and Rules of  
Procedure) Regulations 2013 Schedule 1 states –

30 *“(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.”*

35 In this case I consider that there is no reasonable prospect of the original  
decision being varied or revoked. The application is therefore refused.

E.T. Z4 (WR)

The Tribunal's view was that the respondent's job evaluation study could not be relied upon in terms of section 131(6)(b) of the Equality Act 2010. The judgment makes a substantial number of findings in fact and then provides some legal analysis. The Tribunal's various criticisms are summarised in paragraph 314 onwards. It is absolutely clear that the Tribunal's view was that there were a number of matters which, taken cumulatively contributed to our conclusion that the scheme was unreliable.

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3. In their application for reconsideration the respondent make various criticisms of a number of the individual findings in fact gleaned from a judgment which extended to some 159 pages and sets out various instances where they consider the Tribunal ought to have reached a different conclusion. My view is that even if the respondent's challenge was successful in respect of every single one of the matters they have raised there would still be no realistic prospect of the Tribunal's decision being varied or revoked to the extent that we considered the job evaluation scheme to be reliable. This is particularly the case in relation to the various points where the respondent is critical of the way the Tribunal has sought to apply the job evaluation scheme to the evidence we heard from the individual witnesses. As was made clear in our judgment the Tribunal felt that since we had heard witness evidence on these points we required to make findings in fact in relation to these. We did however make it clear that the Tribunal are not in any way trained job analysts and that in any event the nature of job evaluation is that the fact that we have come to one conclusion does not necessarily mean that all other conclusions are invalid.

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4. In many cases the respondent in their application for reconsideration are essentially seeking to say that they feel the job evaluation scheme could and should have been applied differently. In many cases they seek to raise technical matters relating to the Red Book Job Evaluation Scheme itself which were not foreshadowed either in cross examination nor in final submissions. I would wish to restate that the tribunal are not trained job analysts and the task we were carrying out in relation to our analysis of the job specific evidence we heard was not the same as that expected to be carried out by trained job analysts. We required to make our factual

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findings on the evidence we heard and our analysis of how that evidence ought to have been reflected in the scores allocated to particular jobs was based entirely on the legal submissions made to us supplemented where appropriate by points put to witnesses (who were trained analysts) in cross examination and the responses they made.

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5. For those reasons the application for reconsideration is refused on initial consideration.

6. As noted above I did not consider it appropriate to respond individually to those instances where it is alleged that the Tribunal has misinterpreted the Red Book Evaluation Scheme or where we are invited to change scores. There are, however, several instances where reference is made to a lack of evidence and having checked my notes I would refer to the following:

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(1) Paragraph 3. My notes suggest that the individual reading a newspaper was in fact a manager.

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(2) Paragraph 4. My notes indicate that there was an exchange regarding this point during Mrs Erskine's cross examination. My recollection is that she agreed that the offers made were a small percentage of what could have been obtained had the case gone to a Tribunal however she made the point that she would tell members that there was no saying how long they would have to wait for this money or how much would be kept by the no win no fee solicitors.

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(3) Paragraph 7. The source of that statement was the evidence of Ms Marshall. She said that out of a 30-minute visit 25% was spent dealing with incontinence. Ms Ireland said the vast majority of service users had incontinence issues.

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(4) Paragraph 8. There was some conflict of evidence as to whether or not all School Cleaners clean toilets. A recollection is that Mr Kinmont who had acted as both a Cleaner and a Cleaning Supervisor was quite clear that this was something which all cleaners would do who were working in a school and we preferred his evidence.

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(5) Paragraph 9. Our recollection is that this was quite clearly stated by the School Cleaners who gave evidence.

(6) Paragraph 14. Our understanding was that Ms Young gave evidence describing her role as both a Catering Assistant and Catering

Supervisor. She had worked as a catering assistant in a fire station until her clearance came through to work as Cook in charge of a small primary school. Her evidence of her time as a catering supervisor also referred to the work done by the catering assistant who also worked in the school

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(7) Paragraph 10. Accepted that the national living wage brought in in 2013. The year 2017 gives the date of the job evaluation study.

(8) Paragraph 15. The respondent is correct to point out the words inadvertently omitted. This was a typographical error and will be dealt with by way of a certificate of correction.

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Employment Judge : I McFatridge  
Date of Judgment : 10 August 2023  
Date sent to parties : 15 August 2023

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