



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Wilkinson

**Respondent:** Medivet Group Limited

**Determined at:** Leeds via CVP      **On:** 26<sup>th</sup> September 2023

**Before:** Employment Judge Moxon

## JUDGMENT ON RECONSIDERATION

1. The Claimant's application for reconsideration of the judgment, dated 30<sup>th</sup> August 2023, dismissing the claim for direct disability discrimination, is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.
2. The Claimant's application for reconsideration of the Deposit Order, dated 30<sup>th</sup> August 2023, is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

## REASONS

### Introduction

1. At the conclusion of the preliminary hearing, held remotely from Leeds on 30<sup>th</sup> August 2023, judgment was given dismissing the claim of direct disability discrimination on account of the fact that the Respondent did not have actual or constructive knowledge of the Claimant's disability. A Deposit Order was made in relation to the claim for direct sex discrimination.
2. The Claimant has applied for a reconsideration of those decisions. She has argued two broad grounds:
  - a. The procedure was unfair; and
  - b. The decisions were wrong.

The law

3. Rule 70 of the Employment Tribunal Rules of Procedure provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. The Tribunal may confirm, vary or revoke its judgment.
4. Rule 72 provides that if the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the Tribunal shall inform the parties of the refusal.

Fairness

5. The Claimant argues that it was not fair to proceed with the preliminary hearing on 30<sup>th</sup> August 2023 and has provided various reasons:
  1. *I was not informed that the preliminary hearing was to constitute a full hearing under oath with witnesses. Had I been made aware of this I would have preferred the hearing to be held in person.*
  2. *I was not informed of the change of Counsel from Ms Adeola Phadipe to Mr James Boyd.*
  3. *I was not informed that two witnesses Claire Moody and Racel West would be representing the respondent.*
  4. *In July I suffered a pet bereavement and have been substantially affected by this loss, medical information can be given if required.*
  5. *Subsequently, I contracted a variant of Covid and was only just in recovery from the debilitating effect of this in addition to my disability of hypothyroidism. This made it very difficult for me write my tribunal documents and indeed to present my case at the hearing by CVP.*
  6. *I only received the hard copy document bundle from the respondent on 26 August 2023 giving me very little preparation time.*
  7. *Furthermore, the Respondent has been selective in their disclosure of information and has misrepresented information to the court.*
  8. *I requested full disclosure of information on the 14 May 2023 including a SARS request. A court order for full disclosure was granted at the preliminary hearing on 30 June 2023. This does not constitute fairness in terms of the judgements made.*
  9. *My claim is very complex and very dependent on understanding the timelines and the background to the case. It requires more than three-quarters of an hour for a judgement to be made.*
6. None of those matters give rise to unfairness. The Claimant did not request a postponement or adjournment of the preliminary hearing. She did not ask for the hearing to be re-listed as an in-person hearing. I am satisfied that a remote hearing was appropriate and the technology worked well and did not disadvantage either party.
7. It is unclear why the Claimant was not aware that witnesses would give evidence, given that witness statements had been provided in advance of the hearing that was listed for a full day. In any event, she was not disadvantaged as she was given breaks during the hearing to prepare questions when requested and was given appropriate guidance.

8. The Respondent was entitled to instruct whomever they wished and a change of counsel for the hearing did not give rise to any unfairness. The Claimant's comment that Ms Moody and Ms West were representing the Respondent is inaccurate. They were witnesses, not representatives.
9. The Claimant disclosed that she had covid symptoms but did not assert that she was unable to proceed with the hearing. She did not present as particularly unwell or unable to proceed. Both parties were given breaks upon request. A bereavement some weeks before the hearing would not have necessitated a delay in the hearing and, in any event, no postponement was requested or evidence provided of the Claimant being unable or unfit to proceed. The Claimant confirmed during the hearing that she had received the papers and had read them, including the witness statements. She had sufficient time to prepare and provided a lengthy witness statement for the hearing.
10. The Claimant has sought significant disclosure. I was satisfied that adequate and appropriate disclosure had been undertaken, sufficient to proceed with the preliminary hearing without delay. Again, it was not argued that the hearing should be adjourned or postponed to await disclosure of further material. The only item that the Claimant stated during the hearing that she would have liked me to have seen was CCTV footage from the surgery, to show that she had told a colleague, Ms Moody, that she had hyperthyroidism. However, she stated that she was unsure if it would have audio. Further, the production of such footage would not have affected my judgment. I commented, at paragraph 34 of the reasons (emphasis added):

“I do not accept that the Claimant told Ms Moody on 4<sup>th</sup> July 2022 that she had hypothyroidism. I note that the Claimant made no reference to that discussion prior to her witness statement on 29<sup>th</sup> August 2023. The height of the Claimant's evidence is that she says that she “*believes*” that she told Ms Moody, whereas Ms Moody is adamant that, whilst she observed the Claimant taking the injection, she was not told of the reasons or of any fatigue. I prefer the evidence of Ms Moody. **In any event, I am satisfied that the Claimant telling a subordinate about the use of B12 injections, or that she has hypothyroidism causing fatigue, does not equate to the Respondent having knowledge, either actual or constructive, about the Claimant's disability.**”

11. Further, even upon the Claimant's own evidence, that Respondent could not have had knowledge of her disability as she accepts never disclosing day-to-day difficulties or disability and never having completed the medical form that was repeatedly sent to her on behalf of the Respondent.
12. In summary, no unfairness arises from not postponing or adjourning a hearing where there was no good cause to do so; where there was no request to do so; and where there was no assertion that a party was unable to adequately participate. It is therefore not necessary in the interests of justice to vary or revoke the orders made. There is no reasonable prospect of the original decisions being varied or revoked

The decisions were wrong

13. The arguments contained within the requests for reconsideration of the decisions are attempts to reargue matters. They are arguments that I considered and rejected on 30<sup>th</sup> August 2023. The reconsideration request is accompanied by evidence that was before me and considered during the preliminary hearing. I am satisfied that the decisions made were sound, for the reasons outlined within the Judgment and the Deposit Order.
14. The broad reference to awaiting disclosure does not render the decisions wrong. As outlined within the judgment, even upon the Claimant's own evidence, the Respondent could not have had knowledge of her disability as she accepts never disclosing day-to-day difficulties or disability and never having completed the medical form that was repeatedly sent to her. Whilst I have imposed a Deposit Order, which was appropriate upon the evidence before me, that is not a terminatory ruling and the case can be fully litigated at the final hearing listed in December 2023 if the Claimant proceeds with the claim. I note that she has paid the deposit. She has not argued the existence of material that would have led me to a different conclusion about the merits of the claim.
15. it is not necessary in the interests of justice to vary or revoke the orders made. There is no reasonable prospect of the original decisions being varied or revoked.

Conclusions

16. The judgments of 30<sup>th</sup> August 2023 are therefore confirmed.

Employment Judge **Moxon**

Date: 26th September 2023

**Note**

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