



EMPLOYMENT TRIBUNALS

Claimant: Miss M Waterworth

Respondent Manchester University Hospitals NHS Foundation Trust

JUDGMENT ON A RECONSIDERATION

The respondent's application dated 6 April 2023 for reconsideration of the Judgment sent to the parties on 27 March 2023 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. I have considered the respondent's application for reconsideration of the Judgment. The application was emailed by the respondent and received by the Tribunal on 6 April 2023. It consists of 2 pages of tightly typed submissions. Unfortunately, due to an administrative backlog, the application was not referred to me for some months, for which I apologise to the parties.
2. I have taken the contents of the application into account. The claimant did not respond to the application despite having the opportunity to do so.

Rules of Procedure

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.
4. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance

to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The application

5. The claimant largely failed in her complaints of whistle-blowing detriment and disability discrimination brought against the respondent in 5 separate claims which culminated in a 15-day final hearing. She succeeded on one discrete allegation, relating to a comment made by one of the respondent's managers. The claimant was awarded £900 for injury to feelings as a result.
6. The respondent's application for reconsideration concerns paragraphs 210-211 and 230 of the Judgment and the single point on which the claimant succeeded. The respondent contends that there has been a misunderstanding which has led to an error.
7. The respondent relies on the fact that, in its response to the claims, the respondent did not accept that the allegation amounted to less favourable treatment nor that the comment was made because of the claimant's disability. In addition, the respondent relies on the witness statement of the manager concerned and contends that, whilst the manager admitted his comment was a flippant and clumsy expression of frustration, no discrimination was admitted.
8. In the Judgment at paragraph 210, the Tribunal recorded that the manager had admitted in oral evidence that the comment was "wrong" and inappropriate. He apologised, both in his witness statement and in oral evidence to the claimant directly, at the hearing. The manager sought to explain his actions through context, explaining that at the material time he had a lot of personal issues to deal with, that it was a difficult time for him both professionally and personally, and he accepted that his conduct had slipped.
9. Whilst the issue of whether the witness had made the comment because of the claimant's disability or because of something arising from disability was not specifically put to the witness, the Tribunal considered carefully the thrust of the claimant's questioning on the point and the email in the bundle at page 778. In response to the matter of his knowledge being put to him, the witness readily agreed with the suggestion that his comment was inappropriate in that context. The Tribunal considered that the witness' comment in the email, "She can read, I presume" displayed an attempt to diminish or down-play the effects of the claimant's dyslexia. The Tribunal therefore considered that the witness effectively agreed with what

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amounted to the implication, in cross-examination, that his remark was discriminatory.

10. This was underlined by the fact that the witness agreed that the remark was wrong and had very quickly sought, first, to apologise to the claimant once again and, second, to explain his conduct by supplying very personal mitigation. The Tribunal took account of the fact that this was a senior manager who claimed to be up to date with Equality and Diversity training and in those circumstances, the Tribunal concluded that the remark was unwarranted and discriminatory less favourable treatment because of disability and that the respondent's witness accepted it to be so.

Conclusion

11. Having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Batten
Date: 22 September 2023

JUDGMENT SENT TO THE PARTIES ON:
2 October 2023

FOR THE TRIBUNAL OFFICE