



EMPLOYMENT TRIBUNALS

Claimant: Ms S Jones

Respondent: St Mark's Pre-School

Heard at: Southampton

On: 2, 3, 4 October 2023

Before: Employment Judge Dawson, Ms Ratnayake, Mr Shah MBE

Appearances

For the claimant: Representing herself

For the respondent: Mr Wyeth, counsel

Order on Application for Reconsideration

1. The claimant's application for reconsideration of the judgement given at the hearing on 4 October 2023 is refused.

REASONS

1. An application is made pursuant to rule 70 of the Employment Tribunal Rules of Procedure, for reconsideration of the decision which was given orally on 4 October 2023. Written reasons were requested at the time and the judgment, together with written reasons, is in the process of being promulgated at the date when this application is determined.
2. Rule 70 provides as follows

70. 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

3. The application for reconsideration is made under rule 71 of the Employment Tribunal Rules of Procedure. The process under rule 72 is for the judge who chaired the full tribunal to consider the application and determine, first, whether he or she considers that there is no reasonable prospect of the original decision being varied or revoked. If the judge is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.
4. Under rule 71 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.
5. For the reasons I will set out below I do not consider that there is any reasonable prospect of the original decision in this case being varied or revoked and, therefore, I refuse the application for reconsideration.
6. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “*An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”*
7. The application for reconsideration is contained in an email dated 13 October 2023. It does not have any grounds for asserting that a reconsideration is necessary in the interests of justice. It does, however, attach a copy of a letter which has been sent to the Employment Appeal Tribunal. I have treated that letter as setting out the grounds for the application for reconsideration.
8. Insofar as the letter complains about matters which led up to the hearing, the claimant was able to raise such matters with the tribunal. The only matter which the tribunal records being raised with it was in connection with the bundle. Paragraph 13 and 14 of the Reasons for the judgment record as follows:
 - 13 The creation of the hearing bundle had caused a significant amount of difficulty up to the hearing. A hearing had taken place on 18 August 2023 to attempt to resolve the difficulties. The tribunal at that hearing had required the bundle to be based on one which would be sent to the claimant by 23 August 2023. At this hearing the claimant believed that

the final bundle was different to the one which had been sent to her following the case management hearing. Close analysis showed that the only differences were that

- a. at the front of the lever arch file the respondent had inserted the witness statements and
- b. the respondent had also inserted as pages "A" "B" etc additional pages which the claimant had sought to include.

Once those points had been clarified the claimant was able to proceed but, in fact, in order to assist the claimant when giving evidence and asking questions, she used the bundle which had been sent to her by the respondent after the hearing on 18 August 2023.

14 At the hearing on 18 August 2023 a number of adjustments were identified for the claimant, those were all implemented and the claimant was asked to tell the tribunal if she felt the language being used was not sufficiently clear or straightforward or she did not understand. She raised no concerns during the hearing.

9. The matters which the claimant now raises in respect of the bundle were dealt with within the course of the hearing as set out above. Although the stress of conducting litigation should not be underestimated, once the hearing was underway the claimant displayed no confusion in navigating the bundle and did not raise with the tribunal that she was experiencing any such confusion. The points raised by the claimant do not give rise to a reason for a reconsideration of the decision.
10. Insofar as the claimant states that she felt that questioning by the respondent's representative left her in a position where she was unable to ask her own witnesses questions or defend herself, the respondent's representative behaved appropriately during the questioning process and, had he not done so, the tribunal would have stopped him. As set out in paragraph 14 of the Reasons, the claimant did not raise any concerns during the hearing. The claimant had asked for a small hearing room at the case management hearing and that was provided (along with a high backed chair).
11. I do not recall the typing errors which the claimant says led to confusion during the hearing, but confusion from typing errors is not unusual and easily rectified by the parties explaining what the typographical errors are. The judgment was not based on any such confusion.
12. As I have said, the tribunal does not underestimate the stress of conducting proceedings as a litigant in person, nor the distress of feeling that one did not make points as one would have wished, but there must be finality in litigation. Those matters which frustrated the claimant before the hearing could have been raised at the hearing, and insofar as they were, were dealt with. The other points do not give rise to any reasonable prospect of the tribunal granting reconsideration and the application must be dismissed.

Case Number: 1401853/2022

Employment Judge Dawson
Date 20 October 2023

Judgment sent to the Parties: 27 October 2023

For the Tribunal Office