Case No: 2501766/2022

EMPLOYMENT TRIBUNALS

Claimant: **Dr E Efretuei**

Respondent: **Newcastle University**

JUDGMENT

The claimant's application dated 14 August 2023 to reconsider the judgment dated 3 August 2023 is refused.

Reasons

Introduction

1. On 14 August 2023, the claimant made an application for reconsideration of the Tribunal's judgment. The application included a number of grounds on which she contended that it was in the interests of justice to reconsider the judgment. The claimant's request that her application be considered by an independent judge has been addressed separately.

2. The ET's power to reconsider its judgments is provided by rule 70 of the Employment Tribunals Rules of Procedure 2013 which provides that *'A Tribunal may …on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so…"*

3. However, by rule 72(1), it is provided that an application for reconsideration *'shall be refused'* if *'the Judge considers that there is no reasonable prospect of the original decision being varied or revoked. . .'.*

4. When interpreting or executing its power of reconsideration, the Tribunal will be bound to seek to give effect to the overriding objective is provided at rule 2:

> *"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable— (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense."*

5. Although the power to reconsider a judgment is a broad discretion, it is one that must be exercised judicially. Simler P said in Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA:

> *"A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration."*

6. The relevant legal principles were recently revisited by HHJ Shanks in Ebury Partners UK Ltd v Davies [2023] EAT 40 at para 24:

> *"The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT".*

7. An allegation of bias is not an appropriate matter to be considered in an application for reconsideration of the judgment: Papajak v Intellego Group Ltd and others UKEAT/0124/12 at para 47.

Discussion and Conclusion

8. The claimant's application can be summarised as follows: that there was bias on the part of the Judge / Tribunal; that she was denied a fair opportunity to present her case; the Tribunal's findings are 'false' or unsound. She seeks an independent judge to review the case, and if necessary conduct a rehearing.

9. The Tribunal was concerned with a single complaint of direct discrimination; at the outset of the hearing, the law and the issues, including the identity of the comparator and the need to establish a prima facie case, as identified in detail by EJ Sweeney, were revisited, discussed with the claimant and expanded upon.

10. During that discussion, and contrary to the claimant's assertion in her application, the claimant disavowed reliance on the comparator identified by

Judge Sweeney and sought to rely upon page 154 of the bundle as containing information from which a hypothetical comparator might be constructed. In any event, the claim failed not because of the construction of the comparator, but because the Tribunal accepted the respondent's explanation as being a complete explanation that was untainted by race.

11. The treatment complained of was accepted; the only issue to be determined was whether the treatment was because of the claimant's race. The claimant sought no reasonable adjustments: her evidence was read and heard. The claimant was provided with assistance by the Tribunal in her cross examination of SD and informed of the potential consequences of failing to put her case fully. The claimant informed the Tribunal that she was content that she had put her case fully. Further and in any event, the claim failed because the respondent's explanation for the treatment was accepted as being untainted by race.

12. An adjournment to allow the claimant to present closing submissions in writing required explanation. The application was made, without prior warning to the respondent or the Tribunal, only after the receipt of the respondent's written and oral submissions. Allowing the application was not inevitable; fairness to both parties as well as its costs implications were relevant to both sides as well as consideration of whether an adjournment was in accordance with the overriding objective.

13. The claimant contends that she did not have a fair and proper opportunity to put her case, and that the only reliable reflection of her case is that contained in her written submissions and seeks either a paper review of her claim, or a rehearing before a different Tribunal. The claimant's written submissions contain significantly more matters than were put in cross examination, that seek to undermine the respondents' witnesses' credibility. In essence, the claimant seeks an opportunity to rehearse her claim in the manner that Simler P identified as impermissible.

14. The claimant contention that the Judge and/or Tribunal was biased a proper basis to order reconsideration. Finally, the claimant is of course entitled to disagree with the Tribunal's decision to allow further documents, or its assessment of the evidence. That disagreement is not a proper basis on which to overturn the judgment, however.

15. There is nothing in the grounds advanced by the claimant that could lead me to vary or revoke my decision. I consider there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application.

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Employment Judge Jeram

22 November 2023