



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: Biesse Group UK Ltd

JUDGMENT ON AN APPLICATION FOR A RECONSIDERATION

The Claimant's application dated 31 October 2023 for reconsideration of the judgment dated 20 October 2023 with written reasons given orally to the parties on 5 September 2023 is refused.

REASONS

1. The judgment was given orally at the hearing, with reasons, on 5 September 2023. Written judgment was later sent on 20 October 2023.
2. The Claimant emailed the Employment Tribunal on 31 October 2023 applying for a reconsideration of the judgment. The Claimant states in that email that the Employment Judge was biased. The question, in relation to an allegation of apparent bias, is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.
3. I do not consider that my judgment and reasons were biased, or that there was an appearance of bias.
4. Examples of alleged bias by the Claimant include allowing the Respondent skeleton argument that was late. However, the Claimant was given an opportunity to make an application to strike out the Respondent's ET3 defence and explain her application before a decision was made in respect of the Claimant's application to strike out the Respondent defence. The Claimant said that the Respondent already had a 2 week extension and that she did not have a skeleton

argument. The Claimant was not able to show that she was disadvantaged/prejudiced in any way by not having the skeleton argument. The Claimant received it on the morning of the first day of the hearing and produced her own written submissions on 5 September having had the benefit of the Respondent's skeleton argument. There was no bias in refusing a draconian tool of strike out in response to lax behaviour by the Respondent, for which they were criticised by me.

5. The Claimant puts in her application there were statements made by the Employment Judge which showed the Employment Judge's bias. The Claimant has fixed upon queries made by the Employment Judge as statements which was not the case. The Claimant said the Employment Judge made wrongly false assumptions to her and not the Respondent, like whether the recordings were 2 people rather than one person and what the relevance of the Claimant's recordings at the start of the hearing before Employment Judge Young read all the documents, also whether the Claimant took antidepressants as a child. It was the Claimant's case not the Respondent and it was for the Claimant to discharge the burden to show that there was not a valid COT3 agreement. It was the Claimant who gave evidence and so questions were asked of the Claimant regarding her case.
6. The Claimant's 31 October application also suggested that Employment Judge penalised the Claimant for not having medical records, however that was not the case, and the Claimant was not penalised in any way for not having medical records before the start of the hearing. On the contrary the Claimant was given an opportunity to provide them in respect of arguments that the Claimant made for the first time during the hearing.
7. Rule 70 of the Employment Tribunal Rules of Procedure ("Rules") provides a sole ground for reconsideration as, where it is necessary to do so in the interests of justice. The interests of justice does not mean that in every case where a party is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must have regard to the overriding objective to deal with cases fairly and justly, and the Tribunal should be guided by the common law principles of natural justice and fairness.
8. Tribunals have a broad discretion but that must be exercised judicially, which means not only taking into account the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and the public interest in the finality of litigation (*Outsight VB Ltd v Brown* 2015 ICR D11 EAT).
9. Under rule 71 of the Rules, an application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties, or if a request for written reasons was made, within 14 days of the date the written reasons were sent out, if later. The Claimant has made the application within 14 days of the written judgment.

10. There is no reasonable prospect of the original decision being varied or revoked, because the Claimant's application for a reconsideration dated 31 October 2023 does not contain any matters that amount to evidence of bias or apparent bias. The order in which the parties' documents are read are not an indication of bias. I have had regard to the overriding objective, to consider the case fairly and justly and I have done so in respect of the Claimant's application. But I must also have regard to the public interest requirement so far as is possible there be finality of litigation. In the circumstances, the Claimant's application for reconsideration of the judgment dated 20 October 2023 and oral reasons on 5 September 2023 to dismiss her claim is refused.

Employment Judge Young

Date 20 December 2023

JUDGMENT SENT TO THE PARTIES ON
22 December 2023

FOR THE TRIBUNAL OFFICE