



EMPLOYMENT TRIBUNALS

Claimant: Miss J Burdge

Respondents: JCL UK Limited (R1)
Mr B Laly (R2)
Mrs P Laly (R3)
Mrs T Hannaford (R4)

Before: Employment Judge Barton

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. A letter from the claimant dated 27 October 2022 was emailed to both the Employment Appeals Tribunal and to the Employment Tribunal after business hours on 27 October 2023. The date of the letter has been treated as an oversight by the claimant. From that letter it is a little unclear precisely what is being raised but, erring on the side of caution, it has been treated as a reconsideration application.

2. The claimant has applied for a reconsideration of the oral judgment of 27 October 2023. (“the Judgment”). The claimant also requested written reasons following the Judgment on 27 October 2023.
3. The grounds for the reconsideration application are set out in her letter dated 27 October 2022. That letter was received at the tribunal office on 27 October 2023 and was processed on 2 November 2023.
4. The Judgment followed a seven-day hearing that took place remotely on the Cloud Video Platform on 25, 26, 27, 28 September and 25, 26 and 27 October 2023.
5. The claimant's complaints of: failure to make reasonable adjustments for disability, harassment based on disability, direct discrimination, discrimination arising from disability and constructive unfair dismissal were all dismissed by way of a unanimous decision of the panel.
6. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 (“the Rules”).
7. Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
8. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

Grounds and reasons of the reconsideration application

9. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

10. The grounds relied upon by the Claimant appear to be:
 - a. Judge Barton refused the Claimant's representative the opportunity to discuss the TUPE transfer.
 - b. Judge Barton did not allow all the Claimant's evidence to be heard.
 - c. Judge Barton prevented the Claimant's representative from referencing the Equality Act 2010 and other relevant laws.
 - d. Judge Barton was biased in favour of the Respondents.
 - e. Judge Barton relied on the content of a void contract and the Claimants previous contract.
 - f. Judge Barton considered that there was insufficient time for the Respondents to reassess the Claimant's reasonable adjustment passport.
 - g. The TUPE transfer was illegal.
 - h. Judge Barton approved the Respondents transfer of the Claimant to another workplace.
 - i. The Judges had not read all the evidence. If they had then the dates given in the oral Judgment would have been correct.

Decision on the reconsideration application

11. The hearing was the claimant's opportunity to give information, ask questions and raise issues, which she did, through her lay representative. Through her representative, the claimant had the opportunity to ask questions of all witnesses and advance all relevant arguments.

- a. The issues to be determined at the final hearing had been fully discussed and settled at a prior telephone case management preparation hearing. The Claimant through her lay representative was asked to confirm the list of issues before the final hearing began. There was no issue identified in relation to the legality of the TUPE transfer, or the terms of the new contract. The Claimant's lay representative understandably found cross examination a novel experience and did have to be repeatedly guided not to make statements, or speeches when cross examining. Following an intervention from the Respondent's counsel the Claimant's lay representative was directed to move away from irrelevant questioning about her claims regarding the unfavourable terms of the new contract. This was because this was not relevant to the issues to be determined. It was also because the lay representative had been directed on more than one occasion to the settled list of issues as a guide to the matters that were relevant.

- b. The final hearing had been listed for five days and was extended to seven days to facilitate the participation of the Claimant and allow her full opportunity to have her evidence heard. At the start of the final hearing the Claimant made an unopposed application to introduce late evidence, which the panel allowed. The Claimant has not specified in this application for reconsideration exactly what evidence she says she was prevented from bringing at the hearing.

- c. Beyond citing some of the sections of the Equality Act 2010 and some of the TUPE regulations, neither party referred the panel in detail, to the relevant statutory provisions or caselaw. It was observed in the Judgment that a detailed analysis of the statutes, their interpretation and the caselaw may not always be helpful to a litigant in person.

Neither party was prevented from making references to the law. When deliberating the panel directed itself appropriately in relation to the applicable law.

- d. The decision was a unanimous decision of the three member panel and not a decision by the Judge alone.
- e. The issue of the contracts formed part of the findings of fact which the panel agreed upon.
- f. The Adjustment Passport formed part of the findings of fact which the panel agreed upon.
- g. The TUPE transfer was referred to in the ET1. However, there were no claims brought by the Claimant in relation to the TUPE transfer. No such claims were settled at the telephone case management preparation hearing. No claims of this nature were raised at the start of the hearing. When the Claimant's lay representative began to explore the TUPE transfer and the terms of the new contract in cross examination this was the first time that the issue arose in the hearing.
- h. Neither the panel nor I approved a transfer by the Respondent of the Claimant. Our findings in relation to the proposed move of the Claimant to the London Road branch formed part of our findings based on the evidence presented to us.
- i. In relation to the Claimant's reasonable adjustment passport and any change to that, this formed part of the panel's findings of fact, which were set out in the Judgment.

- j. The Claimant has not set out in her grounds what evidence was not read by the panel. The Claimant has not set out in her grounds which dates were incorrectly cited in the Judgment.
12. The Tribunal gave all the issues full consideration and prepared its decision and reasons in detail. The claimant seeks to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings.
13. The application is an attempt to re-litigate what was explored in detail at the hearing. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The claimant's application does not identify any new matters.
14. It is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, and it is a fundamental requirement of litigation that there is certainty and finality.
15. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the claimant is able to make to the Employment Appeal Tribunal. These are not matters for a reconsideration request.
16. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the

applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean “that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”.

17. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

18. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Barton
Date: 24 November 2023
Corrected: 5 January 2024

Amended Judgment sent to Parties:
9 January 2024

For the Tribunal Office