



## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M. Harkin

**Respondent:** Laniwyn Care Services Ltd

### RECONSIDERATION

Upon the Respondent's application for reconsideration of the Tribunal's Judgment dated 14 June 2023, determined without a hearing

The Respondent's application for reconsideration of the Tribunal's Judgment dated 14 June 2023 (sent to the parties on the 14 June 2023) is not well founded and is refused. The original Judgment is confirmed.

### REASONS

*Number in brackets relate to the Judgment and Reasons dated 14 June 2023.*

1. The factual background to this case can be found the Tribunal's Judgment and Reasons issued on 14 June 2023, which has been provided to the parties separately. I therefore do not repeat the factual history here.
2. The Tribunal's Judgment on remedy was issued to the parties on the 7 November 2023 and a corrected Judgment was issued on 5 December 2023.

#### **The Application for Reconsideration**

3. In email dated 21 November 2023 (and provided to me for consideration on 5 December 2023), the Respondent sought reconsideration of the unfair dismissal Judgment.
4. The Respondent's reasons are, in summary, that:
  - i. The claimant had poorly managed the Respondent's business and relationships with third parties which resulted in a loss of business of tens of thousands of pounds. Some of her actions amounted to misconduct.

They could therefore not afford to pay her. Something needed to be done or the business would fold.

- ii. The purpose of the meeting that was arranged was not to dismiss her, but to explain that they could not continue to afford to pay her salary and that she needed to come up with an idea to turn things around. The Claimant resigned with immediate effect. She was not dismissed.
- iii. The Judgment in favour of the claimant is unfair considering that she resigned and her misconduct caused the company to lose a lot of money.

## The Law

5. The rules relating to reconsideration applications are set out at 70 to 73 of the Employment Tribunals Rules of Procedure. Rule 71 requires that an application for reconsideration shall be presented in writing, and copied to the other party, within 14 days of when the written record of the original decision was sent to the parties or within 14 days of the date that written reasons were sent (if later). The application should set out why reconsideration of the original decision is necessary. The 14 day time limit may be extended by virtue of the Tribunal's general power to do so under rule 5.
6. As per rule 70, the Tribunal may reconsider any judgment where it is in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again. If there is no reasonable prospect of the original decision being varied or revoked the application is to be refused.
7. There is an underlying public interest in the finality of litigation. Reconsideration is therefore not a means by which a disappointed party to litigation can get a "second bite of the cherry" if they do not agree with the original decision. In (1) *Flint v Eastern Electricity Board* [1975] ICR 395 (High Court, Queen's Bench Division) it states at 404:

*"But over and above all that (the interests of the parties), the interests of the general public have to be considered too. It seems to me that it is very much in the interests of the general public that proceedings of this kind should be as final as possible; that is should only be in unusual cases that the employee, the applicant before the tribunal, is able to have a second bite at the cherry."*
8. In *Newcastle City Council v Marsden* [2010] ICR 743 (EAT) it was said, at paragraph 17:

*"In particular, the weight attached in many of the previous cases to the importance of finality in litigation—or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry—seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal)."*
9. In *Ministry of Justice v Burton* [2016] ICR 1128, the Court of Appeal said, at paragraph 21:

*“... 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...”*

10. In *Outasight VB Ltd v Brown 2015 ICR D11, EAT*, Her Honour Judge Eady QC stated that the wording ‘necessary in the interests of justice’ in rule 70 gives Employment Tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *“which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”*.

### **Conclusions on reconsideration application**

11. The Respondent does not specify in its application for reconsideration which decision/Judgment is challenged. The Judgment that the Claimant was unfairly dismissed was issued to the parties on the 14 June 2023. The remedy Judgment was issued to the parties on the 10 October 2023. A certificate of correction was issued on the 4 December 2023 in respect of the remedy Judgment. This was to correct an incomplete case number.
12. The Respondent made its application for reconsideration on the 21 November 2023. In that reconsideration application, the Respondent challenges the substance of the finding that the Claimant was unfairly dismissed, the Judgment for which was issued to the parties on the 14 June 2023. There is no challenge specifically to the manner in which award of compensation is calculated. Consequently, the application for reconsideration was late because it should have been made by 28 June 2023.
13. No reason is provided by the Respondent for the delay of over 4 months in submitting the application for reconsideration. However, given that the Respondent is not represented, I consider that it is in the interests of justice to extend time for the application for reconsideration to be admitted.
14. The Respondent’s position throughout these proceedings was that the Claimant was dismissed by reason of redundancy [18]. No alternative reason for the dismissal itself was pleaded by the Respondent [18]. The Tribunal found that the Respondent did not rely upon capability or conduct at the time of the dismissal [51-57]. The Claimant was told that she was to be made redundant and later that day gave counter-notice, having been informed that she was to be dismissed [61 and 76]. The Tribunal found that the Respondent did not show that the reason or principal reason for dismissal was a potentially fair reason [83]. Further and in the alternative, the Tribunal found that the dismissal was also procedurally unfair and that, even if a potentially fair reason of redundancy had been shown, that the dismissal would not have fallen within the range of reasonable responses which a reasonable employer might have adopted [84-88]. The Tribunal considered whether there should be a reduction in any compensation awarded and decided that there should not be [89-91].

15. The Tribunal gave full reasons for reaching its findings of fact and conclusions. No new factual matters or issues are raised in the Respondent's reconsideration application. The submissions made by the Respondent in the application for reconsideration therefore amount to no more than a disagreement with the findings of fact and the conclusions of the Tribunal.
16. Consequently, for those reasons, the Respondent's application for reconsideration made under rules 70 and 71 of the ET Rules of Procedure is not well-founded and is refused. Acting in accordance with rule 72, I do not consider that the interests of justice require that the Judgment or its Reasons be varied or revoked. There is no reasonable prospect of such variation or revocation. The Judgment and its Reasons are confirmed.

---

**Employment Judge S.L.L. Boyes**

---

**Date: 8 January 2024**

**Sent to The Parties On 2 February 2024**

**FOR EMPLOYMENT TRIBUNALS**

**Public access to Employment Tribunal decisions**

**Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.**