



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000287/2023**

5

**Hearing  
Held in Edinburgh on 30 January 2024**

**Employment Judge A Jones**

10

**Ms N Watson**

**Claimant  
Represented by:  
Mr Wachtel, solicitor**

15

**Midlothian Council**

**Respondent  
Represented by:  
Mr A Thomas,  
solicitor**

20

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Tribunal's judgment of 26 October 2023 will be varied as follows:

1. The date of the hearing was 16 October 2023.
2. The respondent's designation is 'Midlothian Council'
- 25 3. In paragraph 20 of the judgment 'March 2008' should be amended to  
'March 2018'.

In all other respects, the claimant's application of 3 November for reconsideration of the judgment of 26 October is refused.

30

**REASONS****Background**

1. The Tribunal promulgated a judgment in this case on 26 October 2023. A  
5 number of typographical errors were made in that judgment and a certificate  
of correction will be issued in that regard.
2. The claimant submitted an application for reconsideration of that judgment on  
3 November by email. The application ran to 22 pages. While lengthy, it was  
not at all clear what the basis of the application was said to be. The claimant  
10 did highlight the errors outlined above. She then made reference to other  
individuals being present during the course of the hearing which was open to  
the public. The claimant had not raised any concern about those present  
during the hearing at the time.
3. The application then went through the various paragraphs of the judgment  
15 criticising the findings and conclusions. The claimant also attached various  
documents to the application which appeared to be screenshots. There was  
no reference to the relevance of these documents in the application.
4. The Tribunal wrote to the claimant on 6 November indicating that while the  
20 application had not been refused, it appeared to the Tribunal that the claimant  
was seeking to introduce new evidence which had not been led at the  
previous hearing, without explanation as to why it had not been introduced  
previously. It also pointed out that the claimant's application was difficult to  
follow, and the basis of her application was not set out in any coherent  
manner.
- 25 5. The claimant sent a further email on 8 November indicating that most of the  
evidence now being submitted had been in the 'legal bundle' (referring to the  
bundle before the hearing in October) and set out the grounds for her  
application. Unfortunately, that document which also ran to around 22 pages  
did not provide clarification on the basis of her application.

6. The respondent sent a response to the application for reconsideration on 9 November indicating that the application appeared to be an attempt to have not a reconsideration of the judgment but a full rehearing using additional evidence that was not before the Tribunal at the previous hearing.
- 5 7. Given that the claimant was unrepresented and that the basis of her application was still not clear but she appeared to be suggesting that there was new evidence which ought to be admitted to allow a reconsideration of the judgment, the Tribunal determined that a hearing should be listed to consider the matter. The claimant was ordered to ensure that any documents  
10 to which she wished to make reference should be provided to the respondent and the Tribunal by 15 December.
8. The claimant emailed the Tribunal on 16 November requesting that the Tribunal 'place an Order to the Respondents, regarding the FOI requests that I have submitted to Midlothian Council Legal Department, through Mr William  
15 Venters on 13/9/23, as the information requested is imperative for my case.'
9. That application was refused. The claimant was also required in a letter of 17 November to ensure that any documents she wished to rely on at the reconsideration hearing which were not before the original hearing should be in a separate bundle of documents which should also be paginated and  
20 indexed and that she would be required to make submissions as to why the Tribunal should have regard to any documentation which was not before the original Tribunal.
10. The claimant lodged an appeal against the judgment on 24 November.
11. The claimant lodged a bundle of documents on 14 December. The claimant  
25 then sent an email on 17 January asking for clarification as to whether the original bundle should be produced at the forthcoming hearing. The claimant was referred to previous correspondence explaining that documents were to be provided by 15 December. No further documents were produced.
12. The Tribunal was informed on 24 January that the claimant was to be  
30 represented at the forthcoming hearing.

**Hearing**

13. The hearing commenced around an hour late due to the claimant's representative having been delayed for which he apologised to the Tribunal.  
5 It was also interrupted during the claimant's evidence by a fire alarm which required the evacuation of the building.
14. The bundle of documents which had previously been lodged in December 2023 was produced. I explained to the claimant's representative that I remained unclear as to the basis of the application. He submitted that the  
10 claimant had taken a 'blunderbuss' approach (to use his words) to her application setting out everything she believed was wrong with the judgment. However, the essence of her application appeared to be that new evidence should be admitted.
15. There appeared to be some confusion as to the scope of a reconsideration  
15 hearing initially on the part of the claimant's representative but after discussion it was accepted that if the judgment was wrong in law, that was a matter for appeal. It was clarified at the conclusion of the hearing in response to a question from me as to what order the claimant was seeking, that what was being sought was the revocation of the original judgment, for new  
20 evidence to be admitted and for there to be a rehearing of all evidence including the new evidence. No submissions were made as to whether that should be before me or another Employment Judge.
16. I indicated that I wished to hear initially whether the evidence in the current  
25 bundle was before the Tribunal at the original hearing and if not, why that was. It appeared to me, and was accepted by the parties, that the logical approach to dealing with matters was to first determine if there was any evidence which was said to be new whether it should be admitted. If new documentary evidence was admitted, I would then hear further evidence regarding that and whether the evidence was such that the judgment should be reconsidered.
- 30 17. We then heard evidence from the claimant. Despite my direction to separate the issue of the admissibility of any new documents and what evidential value

they might have, the claimant continued to be asked questions regarding both matters. The claimant's evidence was confusing and contradictory. At one stage I had to remind the claimant that she was on oath and that it was important for her to tell the truth as her evidence regarding the documents before the Tribunal continued to change during the course of the morning.

5

18. The claimant had to be encouraged by me to focus on the issue before the Tribunal on a number of occasions and the method of questioning did not assist in maintaining that focus. It was accepted that the documents now before the Tribunal were not before the original Tribunal. Initially the claimant's evidence appeared to be that she had not had the documents which were now being produced as they were deliberately withheld from her by the respondent. When asked (by me) how she came to have them now, it transpired that most of the documents were in fact screen shots of documents. In answer to questions from me, it appeared that these screen shots had been taken by the claimant on her phone although not clear when. However, the claimant said that had them at the time of the original hearing. She indicated that she didn't realise that they were relevant but now realised that they were. However, the claimant did not maintain that position. At other stages in her evidence, she seemed to revert to the suggestion that she did not have the documents as they were withheld from her. She then said that she had provided these documents to the respondent for inclusion in the joint bundle but that they had not been included. She referred to this as being the 'respondent's problem, not mine'. At the suggestion of her solicitor, she then agreed that she had only sent a list of the documents to the respondent before the hearing she wished to be included and didn't have the original documents. I indicated to the claimant's representative that this leading question (made in re-examination) was entirely inappropriate. When pressed again as to how she could have the documents now, if this were her position she reverted to her original position and said that there were lots of documents which had not been given to her and ought to have been. It was difficult to make sense of her evidence.

10

15

20

25

30

19. The claimant accepted in cross examination that she had received the joint bundle on 13 October prior to the hearing commencing on 16 October. She accepted she did not raise with the respondent's agent that any documents were missing.
- 5 20. Parties then made submissions. The claimant's position was that while the claimant had not made a motion to adjourn the hearing to request additional documents, as she probably should have done, equity and a fair hearing required these documents to be admitted now. The respondent's position was that the claimant was seeking a second bite at the cherry and that there was  
10 no basis on which the evidence should be reopened. In any event there was nothing in the documents which would alter the position.

### Relevant law

- 15 21. The rules relating to the circumstances in which a Tribunal may reconsider its judgment are set out at Rules 70-73 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013. In considering whether to grant an application the test is whether it is in the interests of justice to do so. While on one view that might grant a Tribunal wide discretion to reconsider its judgment, there are various issues to which it should have regard. A principal  
20 issue is the importance of the finality of litigation. As highlighted in **Liddington v 2Gether NHS Foundation Trust** by the then Simler P (EAT/00002/16), reconsideration applications should not be made simply for a party to seek to re-litigate matters which have already been litigated.
- 25 22. In addition, where a party is seeking to introduce new evidence as the basis for such an application, regard should be had to the principles in the case of **Ladd v Marshall 1954 All ER 745 CA**, that fresh evidence should only be allowed after consideration of whether the evidence could have been obtained with reasonable diligence at the original hearing, that it would have had an important influence on the hearing and that it is apparently credible.

**Discussion and decision**

23. Although brief oral reasons were given for the decision to refuse the substantive aspect of the claimant's application, mindful of the claimant's appeal against the original decision, I indicated that written reasons would also be provided.
24. As should already be apparent, despite various attempts both in writing and at the hearing to focus the basis of the claimant's application, the basis of her application remained unclear. At best it seemed that the claimant was seeking to introduce new evidence which she said demonstrated that she had a contract of employment with the respondent. That evidence, at pages 1-6 of the bundle had been available at the time of the original hearing. The claimant's representative indicated that it was these pages in the bundle of 57 pages which the claimant had wished to focus upon.
25. The Tribunal was satisfied that the claimant had access to these documents at the time of the original hearing. The Tribunal does not know whether these documents were provided to the respondent's agent Mr Venters who was responsible for putting together the bundle as the claimant did not provide any evidence that she had asked for these documents to have been included in the bundle. In any event, even if she had asked for the documents to be included and they were not, it was open to her to have raised this with the solicitor who sent her the bundle in advance of the hearing. It would also have been open to her to have raised this during the hearing. She did not take either course of action. The claimant in fact made little reference to the extensive documentation which had been produced at the original hearing when she was giving evidence at that time. The Tribunal also notes that there was a section in the index to that original bundle entitled 'claimant's documents'. It would have been readily apparent to her if there were documents she had asked to be included which had not been included.
26. The Tribunal formed the view that the claimant was simply seeking to re-open the case and have it reheard because she was dissatisfied with the judgment.

She clearly continues to be aggrieved in her perception that the respondent has withheld some documentation from her.

27. In any event, the documents at pages 1- 6 of the bundle now produced could not on any view amount to a contract of employment. There is a document setting out the claimant’s working pattern, an email exchange about how many hours she had worked and then what appeared to be some timetables. There was nothing in these documents which were likely to impact on the original findings which were made.
28. Therefore, insofar as the claimant’s application for reconsideration is based on a request to admit new evidence, that application is refused. The Tribunal agrees with the original assessment of the respondent in this regard, that the application is no more than an attempt to relitigate matters. The application is therefore refused.

15

---

**Employment Judge  
Amanda Jones**

20

**1 February 2024**

---

**Date of Judgment**

**Date sent to parties**

---

05/02/2024

---

25