



EMPLOYMENT TRIBUNALS

Claimant: Dr. F Wang

Respondent: Brunel University London

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration of the refusal to issue a deposit order in respect of the Claimant's harassment claims is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. This matter came before me as a Case Management hearing on 11 September 2023. At that hearing, the Respondent made an application for a deposit order to be made in respect of the Claimant's claims of harassment and of victimisation. The application was refused and a request for written reasons followed. Those reasons were issued on 2 November 2023. The Respondent now applies for a reconsideration of the decision not to impose a deposit order in relation to the Claimant's harassment claims only.
2. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.

3. Rule 71 provides that 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) was sent to the parties.
4. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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.
5. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:
 - *ensuring that the parties are on an equal footing;*
 - *dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
 - *avoiding unnecessary formality and seeking flexibility in the proceedings;*
 - *avoiding delay, so far as compatible with proper consideration of the issues; and*
 - *saving expense.*
6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.
7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

“34. [...] 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.

35. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

8. The Respondent's application was received within the relevant time limit. I therefore consider it under Rule 72.
9. The Respondent cites *Tees Esk and Wear Valleys NHS Foundation Trust (appellant) v Aslam and another* [2020] IRLR 495 in support of the contention that “a bare assertion that conduct relates to race is not determinative”. Whilst I agree with this contention, it is important to acknowledge that this is in relation to a finding of fact, having heard evidence on the matter in dispute. A mini-trial of the facts should be avoided in applications for strike out and/or deposit orders.
10. Whilst s 212(1) Equality Act may play a role in this matter, I do not accept that the Claimant should be guided towards one or the other. The determination of the appropriate claim will be made by the Tribunal following consideration of the evidence.
11. I am also reminded that Tribunals should be wary of making deposit orders where facts are in dispute, especially in discrimination cases. This does not mean that a deposit order is never appropriate in such cases, but the issues to be determined at the final hearing were stated and agreed in the Case Management hearing, are based on the Respondent's draft list of issues and remain disputed facts. The Respondent will need to adduce evidence in respect of the Claimant's claims of direct discrimination and victimisation, and I do not accept that a deposit order would satisfy the overriding objective in the manner described by the Respondent in its application. I find that not making a deposit order in these circumstances is proportionate to the issues in dispute.
12. Accordingly, such a course of action would not be in the interests of justice and the application for reconsideration is refused.

Case number: 3302143/2023

Employment Judge Heathcote

8 January 2024

Sent to the parties on:

...5 February 2024.....

For the Tribunal Office:

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