



EMPLOYMENT TRIBUNALS

Claimant: Ms A Birch

Respondent: Trafford College Group

UPON APPLICATION made by letter dated **19 July 2023** sent by the claimant to reconsider the judgment dated **13 July 2023** and sent to the parties on **20 July 2023** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

The application for reconsideration fails.

REASONS

1. Firstly, I Employment Judge Ross, apologise on behalf of the Tribunal for the extensive delay in considering the claimant's application for reconsideration. The respondent's response was received on 8 September 2023.
2. By a letter dated 13 November 2023 the Tribunal asked whether the parties objected to the application being dealt with on the papers without the need for a hearing. A response was sought within seven days if either party objected. Neither party objected, but unfortunately the file was not then referred back to me until February 2024.
3. In the absence of any objection from the parties under rule 72(2), I heard and considered the application on the papers.
4. I reminded myself of the legal test as set out in rule 70 schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The test for reconsideration under the 2013 Rules is whether such a reconsideration is in the interests of justice.
5. I reminded myself of the case law in **Outsight CB Limited v Brown [2014] UKEAT/0253.14**. This case confirms that the previous cases dealing with review under the earlier Tribunal Rules remain applicable to reconsideration applications under Rule 70 of the current Tribunal Rules. The 2013 Rules do not

change the position. Accordingly, the “interests of justice” must be seen from both sides. Reconsideration is not an opportunity for a “second bite of the cherry”. There is a public interest in the finality of litigation.

6. I turn to the grounds relied upon by the claimant.

7. The claimant relied on a number of grounds. Firstly, she stated that she was a vulnerable person who struggled to articulate her points effectively, due to ongoing domestic abuse. The claimant felt she had not been able to present her case soundly due to stress and lack of sleep.

8. The Tribunal is very sorry to hear of the claimant’s domestic situation at that time. The Tribunal, however, can only deal with the information provided at the relevant time. The claimant did not explain any of the information about her private situation to the Employment Tribunal at the relevant time.

9. The Tribunal strove throughout to provide a sympathetic hearing for all parties.

10. The next ground relied upon by the claimant was that she said she felt ridiculed by the respondent’s barrister. The claimant also said she considered some of the witnesses were laughing behind her and taking directions from another individual behind her, and that someone was using a mobile phone and showing the barrister her screen.

11. The Tribunal does not recognise this recollection of events.

12. The respondent is entitled to cross examine robustly but the Tribunal did not at any stage allow the barrister to behave in a way that was inappropriate.

13. Attending the Employment Tribunal is a stressful experience for many people. The Tribunal in this case was as a panel of three and none of the panel recognizes the concerns the claimant is raising now about the conduct of the respondent..

14. The Tribunal has also had regard to the fact that the claimant did not raise any concerns during the hearing itself that the witnesses were laughing or ridiculing her or that she felt ridiculed.

15. So far as the incident in relation to the mobile phone is concerned, the claimant (a litigant in person) appears to have misunderstood the situation. What occurred on that occasion was that one of the respondent’s witnesses found an email on her work email account via her mobile phone and alerted the respondent’s barrister to this. The email was disclosed in Tribunal by the respondent in line with its ongoing disclosure duty. This is appropriate conduct.

16. The claimant alleges that Vanessa Rhodes had not composed her own witness statement and there was collusion between all four witnesses. The claimant seems to be referring to a response given by Ms Rhodes in cross examination when it appeared she was going to refer to legally privileged discussions. Once it became clear that she was going to refer to a privileged

conversation during her evidence the respondent's barrister intervened and requested that the Judge explain to Ms Rhodes the concept of legal privilege, which I did. This is an entirely proper response to legally privileged information. The Tribunal is not satisfied that there was any evidence that Ms Rhodes, or any of the respondent's witnesses, were advised what to write in their statements or that there any collusion.

17. Finally, the claimant makes a generalised allegation that the Tribunal process was not fair.

18. It is not uncommon when a party is unsuccessful that they feel a decision is unfair.

19. However, I am not satisfied that there is any legitimate basis on which to reconsider the judgment. The Tribunal is satisfied that the claimant had the benefit of a fair hearing. The interests of justice must be considered from both sides.

20. The claimant has not adduced grounds to cause the Tribunal to grant her application and accordingly it is refused.

Employment Judge K M Ross
Date: 4 March 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
5 March 2024

FOR THE TRIBUNAL OFFICE