



EMPLOYMENT TRIBUNALS

Claimant: Ms S Bikar
Respondent: Activate Learning

JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on **24 July 2023** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

Preliminary point

1. First, the Tribunal wishes to express its regret that this decision and the written reasons relating to the judgment on this claim has taken so long to be produced. This is due to internal administration issues, and the request not reaching the Judge in good time.

Reasons

Law

2. The question for the Tribunal at this stage is whether there is any reasonable prospect of the original decision being varied or revoked. This is set out in rule 72 of the Employment Tribunal Rules of Procedure 2013, which states:

“(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the

application shall be refused and the Tribunal shall inform the parties of the refusal. ...”

3. Grounds for reconsideration of a judgment are set out in rule 70:

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked, it may be taken again”.

4. In Stevenson v Golden Wonder Ltd 1977 IRLR 474, Lord MacDonald stated that reconsiderations were:

“not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before”.

5. I also remind myself that there is a principle of finality in litigation, and that reconsiderations are therefore an exception to the general rule that tribunal decisions should not be relitigated.

6. Regarding the relevance of fresh evidence becoming available, the Tribunal is guided by the principles in Ladd v Marshall 1954 3 All ER 745. In order for new evidence to be admitted:

“first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible”

Facts

7. The claimant brought claims of constructive unfair dismissal, notice pay, direct race discrimination and harassment in relation to race.
8. The claimant worked for the respondent from 2 January 2018 until her resignation with immediate effect on 26 August 2021. She held the position of Food Service Coach.
9. The claimant claims that, throughout her period of employment, she was subjected to various acts that amounted to discrimination and harassment. She says that this series of events led her to a position where she had to resign, without giving notice.
10. The claim was heard over seven days (5 – 13 June 2023). On Day 7 the Tribunal gave judgment, dismissing all of the claimant’s claims.
11. Following receipt of the written judgment, the claimant applied for reconsideration of the Tribunal’s decision. The application, which spanned several emails, attached numerous pieces of evidence, some of which had been before the Tribunal at the final hearing, some of which were new.

The claimant's application was based on the provision of new evidence that she says supports her case.

Conclusions

- 12. In terms of the new evidence that was not before the Tribunal at the final hearing, this is all documentation that has been disclosed by the claimant, and was in her possession/control at the time of the litigation. The new evidence consists of screenshots from the claimant's mobile phone and emails from the claimant's email account, which have therefore been within her possession and control throughout.

- 13. In any event, on reviewing the new evidence, the Tribunal is not satisfied that the new evidence, even if admitted, would have any reasonable prospect of having an important influence on the Tribunal's findings and conclusions.

Employment Judge **Shastri-Hurst**

Date 8 March 2024_____

JUDGMENT SENT TO THE PARTIES ON

..12 March 2024.....

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FOR THE TRIBUNAL OFFICE