Case No: 2400760/2022

EMPLOYMENT TRIBUNALS

Claimant: Miss J Lomas

Respondent: Cheadle Royal Healthcare Limited

JUDGMENT

The claimant's application dated 14 February 2024 for reconsideration of the judgment sent to the parties on 1 February 2024 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in a 28-page document attached to an email dated 14 February 2024 ("the **Application**"). The Application includes a further 30 pages of documents, which includes new witness statements and new information not available at the original tribunal hearing. **[1]** are references to paragraph numbers from the reasons promulgated with the judgment.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

"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; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"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 by 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."**

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

7. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. Alternatively, the claimant seeks to introduce new evidence, in the form of witness statements and documentary evidence, which were not provided at the original Tribunal hearing. No good reason has been provided to explain why this material was not available at the original Tribunal hearing. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points he makes which should be addressed specifically.

Conduct of hearing

9. The claimant says in her Application:

> *The Judge had to repeatedly ask Jane to wait for the witness to answer because she was interrupting the witness and, in the end, had to understandably make it clear to Jane that he would have to adjourn the hearing if it was to happen again (this is by no means a criticism of what happened). Jane thought this meant that her case would not be heard.*
>
> *After this Jane felt she had to concentrate so hard on doing this because of her illnesses that she* ***could not ask the questions or get her points across as she had wanted.*** *She told me that she could not give verbal submissions on the final day, she felt numb, incapable and did not have the strength. I could see Jane was struggling with her mental capacity and, even though we both knew she could and should have said so much more to explain her case, I knew not to try and push her as she*

10. I had to intervene on multiple occasions during the claimant's cross examination, because rather than ask a question and wait for the witness to answer, the claimant instead engaged in a dialogue with the witness. This meant that the Tribunal could not hear the answer that was being

given by the witness and also resulted in that witness not being given the opportunity to answer the question put. This was not fair or just to the respondent or indeed to the claimant, which is why I intervened on multiple occasions to guide the claimant not to engage in dialogue with the witness or interrupt their evidence. The claimant did not always follow this guidance, which was why I suggested that the Tribunal would take a break if the claimant continued to ignore the Tribunal's guidance, to give her an opportunity to consider her approach to cross examination. This break was not required as the claimant adjusted her cross-examination style after this final warning.

11. At no point during the hearing was it suggested or inferred by the Tribunal that the claimant's case would not be heard. The claimant's case was heard by the Tribunal.

12. At no point during the hearing did the claimant suggested or infer that she could not ask questions or get her point across as she wished.

13. I discussed with the claimant and the respondent, in advance, how they wished to present their submissions. The claimant said she would prefer to produce written submissions, rather than oral ones. The claimant did produce written submissions, and these were considered by the Tribunal in reaching its judgment.

14. In conclusion, I reject the suggestion that the claimant was unable to participate in the hearing effectively due to the Tribunal's intervention in the claimant's cross examination style as described in paragraph 10 above. The intervention was necessary for a fair hearing and I find that it did not prevent the claimant from participating in a fair hearing for the reasons set out in paragraphs 11, 12 and 13 above.

Points not considered in the Judgment

15. The claimant says in her Application:

> *The most upsetting and unjust thing for Jane was being unfairly blamed for a patient self-harming and this seems to have been overlooked in the judgement.*

16. In paragraphs [99 and 100] we found that Andrena Barber had reasonably concluded there was a link between the relationship the claimant had with Patient I, the impact of the behaviour of the claimant on 16 February 2021 on Patient I and their decision to self-harm. We found it was reasonable of Andrena Barber to reach an initial conclusion that it was not safe for the claimant to remain on Elmswood unit as she would represent a risk to Patient I self-harming again.

17. We therefore found that there was a causal link between the claimant's conduct and Patient I self-harming. We did not need to consider whether the claimant was being *unfairly blamed* for Patient I self-harming as we found as a matter of fact that there was a link between the claimant's behaviour on 16 February 2021 and Patient I self-harming, which was why the claimant was excluded from the Elmswood unit.

18. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

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Employment Judge Childe
6 March 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
21 March 2024

FOR THE TRIBUNAL OFFICE