EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss Karim	v	ISWP Support Services Ltd

UPON THE CLAIMANT'S APPLICATION pursuant to rule 71 of the Employment Tribunals Rules of Procedure 2013 for reconsideration of the Remedy Judgment delivered orally on 23 October 2023 and sent in writing to the parties on 13 December 2023.

JUDGMENT on RECONSIDERATION APPLICATION

1. The Respondents' reconsideration application is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. The Tribunal gave an oral judgment on remedy on 23 October 2023 ("the Remedy Judgment") following a multi-day final hearing to determine liability in August 2023 at which the Claimant's complaints were partly upheld. The Claimant has applied for reconsideration of the Remedy Judgment.

2. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any judgment where it is necessary in the interests of justice to do so. Under Rule 72(1), an Employment Judge may determine an application on their own and without a hearing if they consider that there is no reasonable prospect of the original decision being varied or revoked.

3. The starting point clearly has to be the decision the Tribunal reached after the remedy hearing on 23 October 2023. We provided detailed oral reasons for our Remedy Judgment. Should these matters be examined on appeal, it would be for the Employment Appeal Tribunal or other appellate court to say whether those reasons and our decision can stand. Any suggestion that we erred in Law is generally a matter for appeal - Ebury Partners UK Ltd v Acton Davis [2023] EAT 40.

4. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour

Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed,

> *"The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to 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."*

These principles were affirmed by His Honour Judge Shanks in Ebury Partners.

5. In Outasight, the Employment Appeal Tribunal was referred to the EAT's Judgment in Redding v EMI Leisure Ltd. EAT/262/81 in which the EAT had observed:

> *"…When you boil down what is said on* [the Claimant's] *behalf, it really comes to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation…"*

6. By her application for reconsideration, the Claimant seeks an uplift to the award of compensation pursuant to s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992. In resisting her application, the Respondent draws the Tribunal's attention to the Employment Appeal Tribunal's judgment in Pipecoil Technology Ltd v Heathcote UKEAT/0432/11/JOJ, in which the EAT refused an employee's cross-appeal where the employee contended that the award should have been increased pursuant to s207A. In dismissing the cross-appeal, the EAT observed:

> *" … there was no claim before the Tribunal that the compensatory award should be increased pursuant to section 207A of the 1992 Act. By the use of the word "claim", we do not intend to convey that there needed to be a formal claim; the matter needed, however, to be raised expressly before the Tribunal, in our judgement. No submissions were made on the Claimant's behalf before the Tribunal that the compensation should be increased pursuant to section 207A. The Tribunal cannot be criticised in the circumstances for not dealing with the point of their own motion. In our judgment, it is too late for this claim to be made in this appeal."*

7. We were provided with an agreed bundle of documents for the remedy hearing, together with a few additional documents that, on reflection, the Claimant felt she should make available for the hearing. The first two documents in the substantive bundle were a four-page Schedule of Loss and the Claimant's five-page witness statement on remedy. The Schedule of Loss, though detailed, made no reference to s.207A or to the Claimant seeking an uplift to any award to reflect the Respondent's alleged failure to comply with any relevant applicable Code of Practice. Amongst other things, the Claimant sought an award in respect of injured feelings at the exact upper limit of the Vento middle band, a sum in respect of aggravated damages, and precisely calculated sums in respect of interest and grossing up. If she was not legally assisted in the matter, the Claimant was certainly well informed.

8. In paragraph 6 of her remedy witness statement (numbered paragraph 5 in error), the Claimant stated that her grievance was not appropriately investigated, and "the proper process was not followed". She identified four specific failings in

this regard. In paragraph 7 of her witness statement (numbered paragraph 2 in error), she asserted that the Respondent had "retaliated against her grievance" and initiated an unfounded disciplinary investigation into her alleged conduct. She identified two specific matters, though additionally highlighted that the timing of the investigation was designed to intimidate. Finally, in paragraph 8 of her witness statement (numbered paragraph 3 in error), the Claimant identified certain alleged unreasonable conduct on the part of the Respondent in terms of its conduct of the proceedings.

9. In her oral submissions on 23 October 2023, the Claimant did not refer to s.207A or otherwise state that there should be an uplift to any award to reflect any alleged failure to comply with a relevant statutory Code of Practice. We understood paragraphs 6 to 8 of her witness statement to relate to the sums included in the Schedule of Loss as compensation for injury to feeling and for aggravated damages (which we declined to award). Paragraphs 6 and 7 of the Claimant's remedy witness statement do not refer to the ACAS Code of Practice on Disciplinary and Grievance Procedures, let alone to any specific provisions of the Code that the Respondent was said not to have complied with.

10. In my judgement, as in Redding, this is a case in which the Claimant feels that she did not fully do herself justice at the remedy hearing. But, if so, it has not been and could not be suggested that the Respondent somehow caused or contributed to that situation. I am satisfied that there was no 'claim' before the Tribunal at the remedy hearing that the compensatory award should be increased pursuant to section 207A of the 1992 Act. Accordingly, in my judgement, she has no reasonable prospect of persuading the Tribunal that it is necessary in the interests of justice for her to be afforded a second opportunity to raise the issue in support of her belated claim to an increased award.

11. Even had I been persuaded that there were arguable grounds to reconsider the Remedy Judgment, there is no reasonable prospect of it being varied or revoked. As I have said already, the Claimant did not identify in her remedy witness statement any specific provisions of the ACAS Code of Practice that were said not to have been complied with. Although she has belatedly sought to address the matter of an uplift in her application for reconsideration, even then she has not identified any specific paragraphs of the Code that she says were not complied with. Looking again at paragraph 6 of the Claimant's remedy witness statement, the matters complained of within paragraphs 6(a) to (c) do not relate to any provisions in the ACAS Code of Practice regarding the handling of grievances. Only paragraph 6(d) seemingly relates to the Code, namely the first bullet point in paragraph 4 of the Code which states:

    - *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*

If so, any complaint in that regard was, and remains, bound to fail. In dealing with the Claimant's complaint in this regard contained in paragraph 27.3 of her background information document, we acknowledged that at the point the Claimant resigned her employment, two months had elapsed since she had first raised her grievance. However, in our judgment we concluded as follows:

> *"That is not an unreasonable length of time for an employer to determine what was undeniably a particularly detailed grievance. There is evidence in the hearing bundle that the Claimant was being kept updated in the matter. Even if she had persuaded us that there was delay (we are not persuaded that there was delay or unreasonable delay as she alleges), the matter was in the hands of Croner. There is no evidence whatsoever*

that its handling of the matter, or the Respondent's response to its enquiries or requests for information or documents, was somehow informed or influenced by any protected characteristics or disclosures of hers. Her complaints in this regard are not well founded."

12. For these reasons, the Claimant's application for reconsideration of the Remedy Judgment has no reasonable prospect of success and is refused.

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Employment Judge Tynan

Date: ……15 March 2024……..

Judgment sent to the parties on
3 April 2024
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For the Tribunal office