



EMPLOYMENT TRIBUNALS

Claimant: Ms V Madhavji

Respondent: 1. Watson Ramsbottom Ltd
2. Jonathan Leach
3. Stuart Maher
4. Chris Mullaney
5. Mark Cartin

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

The claimant's letter of 18 March 2024 for reconsideration of the strike out judgment in this case is refused.

REASONS

1. By letter presented to the tribunal dated 18 March 2024 (received on 19 March 2024), the claimant applied for reconsideration of the judgment that was handed down orally to the parties on 16 February 2024, with the written judgment (without reasons) being sent to the parties on 26 March 2024.
2. The claimant also sent the tribunal further documents on 27 March 2024 and again on 02 April 2024. All these documents have been considered in making this decision.
3. The initial set of documents includes a narrative purporting to be an application to have the decision reconsidered. However, this is somewhat limited in what it explains in this regard. Most of the documents relate to an application to amend the claim. This is to be considered at the next hearing listed for 02 July 2024, and no more is said here.
4. The second set of documents received by the tribunal on 27 March 2024 are documents that had already been considered at the hearing on 16 February 2024 (this is item 98 on the Judicial Case Management system).
5. The third set of documents further develops the application for reconsideration, alongside other matters.

6. This judgment is limited to those matters that are relevant to the application for reconsideration. Other matters, specifically concerning amendment of the claim and/or the application for an order under Rule 50 will be considered at the hearing on 02 July 2024.
7. It is not entirely clear the basis on which an application for reconsideration was being made. However, from the documents I have seen, broadly, this request appears to concern the following matters:
 - a. That I had incorrectly characterized the medical documents relied on as being from December 2023 and January 2024.
 - b. That the medical documents do support that there were medical reasons as to why the claimant could not produce the documents as directed.
 - c. That the allegations were partially recorded in the particulars of claim.
 - d. That the manner that the respondent processed data also explained the reason why the claimant had not complied with the tribunal directions.
 - e. The respondent had been delaying complying with a subject access request, which was made prior to the issue of the claim form.
8. For a full history of the litigation, recourse must be had to the tribunal's earlier judgment and reasons.
9. The position with respect reconsideration of judgments is contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.
10. Under Rule 72 of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Where the application is not refused, the application may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted, the judge will give the parties a reasonable opportunity to make further written representations.
11. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust** **UKEAT/0002/16/DA**:
 - a. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
 - b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
 - c. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
12. Furthermore, Simler P, at paragraphs 34 and 35 of Liddington also explained the following:

"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

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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.

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."

13. I have considered carefully the matters that have been raised in the claimant's letter of 18 March 2024, and the documents received on 27 March 2024 and on 02 April 2024.
14. First, the majority of the contents of the application, put simply, is not an application for reconsideration. These matters are taken no further in this decision. And secondly, in particular with matters concerning the claimant's position that wrong findings were made, and evidence was not considered, in my view, they amount to re-arguing of the claim. The claimant had every opportunity to put forward her case and to make the arguments she wished to make at the original hearing. Applying the important principle of finality of litigation, it is not in the interests of justice her to allow the claimant to re-argue her case. Nor is it proportionate to do so.
15. For the avoidance of any doubt:
 - a. All medical documents that were attached to the claimant's correspondence dated 09 January 2024 were considered. This included a GP letter dated 26 September 2023, a GP letter 15 November 2023 and GP letters dated 26 September and 13 December 2023. It is only in the documents dated 26 September 2023 and 15 November 2023 where there is reference to the claimant's symptoms having prevented her from submitting by the deadline. These documents do not support the assertion by the claimant that she was incapable of producing the further and better particulars, but rather there may be a delay. This hearing took place some 3 months after the latter of those two documents, and yet the claimant had still not produced the further and better particulars. This was in circumstances where the claimant herself must have considered herself fit enough to produce the further and better particulars given she was requesting short extensions. This all formed part of the original decision. These documents, and their contents, have already been considered and taken into account.
 - b. I accept that there is no medical document dated January 2024. However, this was a reference to the date of the letter from the claimant under which the documents were sent to tribunal. This is a minor error on my part and is not a ground for reconsideration.
 - c. The claimant is re-arguing a case she has presented already when she raises that her claim is partially included in her claim form already. However, the claimant was directed to clearly set out what her specific complaints were, as it was not clear what allegations she was pursuing. This is clear from EJ Slater's record of the discussion at the first hearing and it is clear having considered the claimant's pleadings. This is taken

no further in this judgment as it has already been considered.

- d. The claimant also presented her case/submissions that the manner that the respondent processed data also explained the reason why the claimant had not complied with the tribunal directions. This was considered by the tribunal at the previous hearing. This is again, the claimant seeking to re-argue her case, which is not the function of an application for reconsideration.
- e. As explained at the previous hearing, delays in complying with a Subject Access Request is not a sufficient reason to not comply with tribunal directions for further and better particulars. And it is not a sufficient reason to reconsider a decision. The claimant must have known what her case was when she presented her claim form. The onus was on the claimant at this point to explain her claim.

16. There is therefore no reasonable prospect of the original decision being varied or revoked.

17. The application for reconsideration is therefore refused.

Employment Judge **Mark Butler**

Date __04 April 2024__

JUDGMENT SENT TO THE PARTIES ON

Date: 19 April 2024

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FOR THE TRIBUNAL OFFICE

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