

EMPLOYMENT TRIBUNALS



Claimant: Ms K O'Sullivan

Respondent: (1) Guys & St Thomas's NHS Foundation Trust
(2) Capita PLC
(3) Ms Williams
(4) Central London Community Health NHS Trust
(5) Mr Abbs

At: LONDON SOUTH EMPLOYMENT TRIBUNAL

Before: Employment Judge Dyal

JUDGMENT UPON APPLICATION FOR RECONSIDERATION

1. The Claimant's application for reconsideration of 26 March 2024 has no reasonable prospect of success and is refused.

REASONS

1. The Claimant is in part re-running arguments that I have already considered and I repeat the reasons I previously gave in my judgment on interim relief.
2. If, as appears to be the case, the Claimant was sent the interim relief judgment at a later time than the Respondents were sent it, that is odd. Judgments are sent to the parties by the tribunal's administration rather than by judges. I can confirm that my instructions to the administration were to send the judgment to the parties. I certainly did not ask for the judgment to be sent to the parties at different times. However, this has no bearing on the correctness or otherwise of the content of my judgment.

3. As to the suggestion that the tribunal discriminated against the Claimant (paragraph 3d), I do not accept that:
 - a. The Claimant says the tribunal “made a great deal of the resignation emails”. I note that these were emails that she particularly emphasised that she wanted me to read.
 - b. It is not a question of holding her to any standard or expecting her to write emails or write them in a particular way. She relied on these emails in support of her case that she had resigned. So it was necessary to pay close attention to them.
 - c. It was a question of identifying the legal tests the tribunal at trial would have to apply to these emails and taking a view on prospects of success for the purpose of applying the test for interim relief.
 - d. There is no avoiding the fact that the meaning of the emails is difficult to construe. That is so whatever the Claimant’s disabilities and regardless of whether the Respondent had or had not made reasonable adjustments for her.
4. As to the suggestion of unconscious bias - I do not accept it. At the hearing the Claimant made a comment about this after I declared I had in the past been in chambers with Mr Ohringer. I think therefore she may be suggesting I was unconsciously biased towards the Respondent because it was represented by Mr Ohringer. I was not unconsciously or otherwise biased. To be blunt, I could not care less whether Mr Ohringer is on the winning or losing side of this litigation. It is a matter of complete indifference to me. I decided the application in accordance with its merits as I saw them and continue to see them.
5. I do not accept there is any need to set out the PIDs in my decision. The judgment is written for the parties. It is a first instance decision with no precedential value in other cases.
6. I do not accept that I either failed to appreciate or failed to state the gist of the Claimant’s case. Nor that the decision is unbalanced in favour of the Respondent. I set out the Claimant’s case as to constructive dismissal at great length at paragraph 34. It is plain from that, that she considers that the Respondents’ conduct prevented her from attending work.
7. As to the use of the expression ‘someone in their “right mind” ’, I did use the it, but it is not my formulation of words. It is a part of the legal tests that the case-law has established needs to be applied in a situation of this kind (see e.g. *Omar v Epping Forest District Citizens Advice* [2023] E.A.R. 132). That is why I put the expression in speech marks. I cannot change the legal test and it is a test that it was both relevant and important to identify. As I said at paragraph 44 the impression from the emails is that the Claimant was writing at a time of deep distress.
8. The Claimant asks whether any of the male judges “or males barristers in South London ET” have Garrick Club memberships:

- a. So far as judges are concerned, I can only speak for myself. I am not and never have been a member of the Garrick Club.
- b. So far as barristers are concerned, the tribunal has no control over who represents parties. It is matter for each party. The representatives that appear in litigation at London South change constantly on a case by case basis. Hundreds (at least) of different representatives appear at London South each year. The representatives are engaged by parties not by the tribunal. I have no idea whether or not any of them are members of the Garrick Club.

Employment Judge Dyal
Date 23.04.2024