EMPLOYMENT TRIBUNALS

Claimant: Mrs R Nwogu

Respondent: Royal Berkshire NHS Foundation Trust

JUDGMENT

The claimant's application dated **27 April 2024** for reconsideration of the costs judgment sent to the parties on **22 April 2024** is refused.

REASONS

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

1. These are the claimant's grounds for reconsideration, as set out by her representative Mr Ogbonmwan on her behalf:

   1. *Oversight of Crucial Evidence*

      I presented evidence during the proceedings that was critical to the case. It appears this evidence was not fully considered, impacting the fairness and integrity of the judgment.

   2. *Lack of Justification for Cost Order:*

      The respondent did not substantiate the need for a cost order with adequate evidence. The imposition of costs without robust justification undermines procedural fairness.

   3. *Impact on Access to Justice:*

The cost order may deter individuals, especially those without legal representation, from pursuing legitimate claims, impacting their access to justice.

4. *Procedural Fairness Breach:*

   There was an undue focus on procedural errors over the substantive issues at hand, which may indicate a bias or a misunderstanding of the role of a litigant in person.

5. *Misinterpretation of Mistakes as Falsification:*

   The errors in case law references were clerical and corrected promptly once identified. These should not have been interpreted as falsification.

6. *Immediate Rectification of Errors:*

   Upon realization of the mistake, I corrected the errors immediately, showing commitment to integrity in the proceedings.

7. *Excessive Focus on Representative's Conduct Over Merits:*

   The decision focused disproportionately on my conduct rather than addressing the merits of the case.

8. *Bias in Application of Law:*

   The application of legal standards seemed selectively harsh towards my advocacy style, which may suggest bias.

9. *Unreasonable Interpretation of Conduct as Unreasonable:*

   The tribunal's characterization of my conduct as unreasonable was itself not grounded in a balanced consideration of the facts.

10. *Lack of Sensitivity to Challenges Faced by Litigants in Person:*

    The tribunal did not adequately consider the challenges I face as a litigant in person, particularly in managing complex legal issues.

11. *Potential Chill on Access to Justice:*

    The imposition of costs could discourage other individuals from pursuing valid claims due to the fear of financial penalties.

12. *Contradiction to Tribunal's Purposes:*

    The decision contradicts the Employment Tribunal's purpose of providing a fair and accessible forum for resolving disputes.

13. Violation of the Right to a Fair Trial:

The manner in which the costs were imposed could be perceived as a violation of the right to a fair trial, which is fundamental under human rights law.

14. Request for a Pre-Hearing:

Given the complexity and the importance of the issues involved, I am requesting a hearing prior to the continuation of the merits hearing scheduled for July 2024. This would allow a full and fair exploration of these issues.

15. Procedural Integrity and Fair Administration of Justice:

Reconsidering the cost order is essential to maintain the integrity and fairness of judicial proceedings, ensuring that justice is not only done but is seen to be done."

2. It is not clear what evidence the claimant has in mind at point (1). There was no formal evidence submitted by the claimant in opposition to the respondent's costs application.

3. For point (2), the respondent's detailed written costs application was supported by a schedule of costs and an explanation of what they related to.

4. Questions of access to justice and the underlying merits of the claim are dealt with at paras 6-9 of the tribunal's reasons, and this addresses points (3), (4), (7), (10) – (13). & (15).

5. On points (5) & (6) I do not accept Mr Ogbonmwan's characterisation of the falsification of authorities as being clerical errors that were rapidly corrected. What follows is taken from notes prepared by me in relation to the tribunal's oral reasons for an earlier order:

> *"Mr Ogbonmwan* [cited] *two authorities … in support of the claimant's arguments, as follows:*
>
> > *"1. Smith v. Jones [2020] EWCA Civ 1234: The Court of Appeal highlighted the critical role of the List of Issues in framing the disputes for trial, ensuring both parties are clear on what is to be determined.*
> >
> > *2. Doe v. ABC Corporation [2019] UKSC 5678: The Supreme Court emphasized the Tribunal's duty to ensure fairness and justice, stating that a misaligned List of Issues could prejudice the parties' ability to prepare and present their cases effectively."*

The arguments cited did seem to be relevant to the application in question, but on closer inspection authorities with those generic names and unusual citations could not be found in any legal reference materials accessible by the tribunal. Because of that we invited Mr Ogbonmwan to provide us with direct web links to the relevant cases. Mr Ogbonmwan could not do this, and simply told us that he no longer relied on those cases ...”

6. It has never been explained by Mr Ogbonmwan how citation of particular cases that do not exist in support of stated propositions could amount to a clerical error. It has never been suggested by him that, for instance, he had in mind specific cases from which these propositions could be drawn, but gave the wrong citations. If that were the case he has had ample opportunity to explain to us the cases that he actually had in mind, but has not done so. There has been no “correction of errors” beyond Mr Ogbonmwan’s withdrawal of reliance on cases that do not exist.

7. For point (8) it is correct to say that the tribunal has in this judgment and previous orders criticised aspects of what Mr Ogbonmwan calls his “advocacy style”. It is proper to criticise such “advocacy style” where it may be relevant to decisions the tribunal has to make, or as an encouragement to a party or representative to consider adopting a style that may be more helpful to the administration of justice. This does not suggest bias.

8. It is not clear what Mr Ogbonmwan has in mind in point (9), but to the extent we have characterised his conduct as unreasonable in the costs judgment we have also explained why we have made that finding.

9. Given this decision, there is no need for the “pre-hearing” referred to at point (14).

Employment Judge Anstis

Date: 1 May 2024

JUDGMENT SENT TO THE PARTIES ON

2 May 2024

FOR THE TRIBUNAL OFFICE