EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: B

JUDGMENT

The claimant's application dated **28 March 2024** for reconsideration of the Reserved Judgment sent to the parties on **19 January 2024** is refused. There is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. By an email dated 5 February 2024 the claimant sent an application for reconsideration of the Tribunal's Judgment sent to the parties on 19 January 2024 ("the Judgment"). The Tribunal in the Judgment found that the claimant was automatically unfairly dismissed for making protected disclosures. However, we found that two of the disclosures (referred to in the Judgment as PD1 and PD3) were not protected disclosures. Those disclosures related to arrangements for transporting the respondent by car. In relation to PD1, we found that there was no disclosure of information and, if we were wrong about that, that the claimant did not reasonably believe that the disclosure was in the public interest, her sole concern being whether she personally was covered by the insurance for the respondent's vehicle. When it came to PD3, this was a second occasion when the claimant said that she had disclosed information relating to the respondent's travel arrangements. Again, we found there was no disclosure of information and even if there was, the claimant did not reasonably believe that the disclosure was in the public interest.

2. The claimant's reconsideration application relates to those decisions.

3. The claimant's application dated 5 February 2024 appeared to be an incomplete document. On 16 March 2024 the Tribunal wrote to the claimant on my direction asking her to confirm whether that version was the final version or not. If it was not the final version, I directed that the claimant must send the final version to the Tribunal marked for my attention by 28 March 2024. For the

avoidance of doubt, I confirm that the time limit for applying to reconsider the Judgment was extended so that the application was made in time.

4. I considered and decided the application on the papers in chambers.

5. The reconsideration application relies on new evidence having become available since the hearing which the claimant says was not available at the time or prior to the hearing. There were two kinds of new evidence. The first was new documentary evidence. These were (i) the Medicines and Healthcare Products Regulatory Agency document headed "Occupied wheelchairs in cars and private transport – reminders of safe use" (ii) "Seatbelts: The Law". That was from a Government website (iii) the "Motability contract hire agreement terms and conditions for your mobility scheme vehicle" for the respondent's Motability vehicle insured by RSA. The second kind of evidence was new witness evidence. That was from the PA who we referred to as witness C in the Judgment. We heard her witness evidence at the liability hearing.

6. The claimant's reconsideration application is somewhat lengthy. In brief, as I understand it, she says that the new evidence shows that the way the respondent was transported in the back of her vehicle was in fact in breach of health and safety requirements and that this amounted to a breach of a duty of care towards the claimant as the respondent's employee when the claimant was driving the vehicle.

Relevant Law

7. An Employment Tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the Judge considers there is no reasonable prospect of the original decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the Judge considers it in the interests of justice, without a hearing. On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013 ("the ET Rules")).

8. The "interests of justice" test allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the 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 (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).

9. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the original hearing

- that the evidence is relevant and would probably have had an important influence on the hearing; and

- that the evidence is apparently credible.

10. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met (**Outasight** at paras 49-50).

Decision

11. I have decided that there is no reasonable prospect of the claimant's application for reconsideration succeeding.

12. The first reason for that is I am not satisfied that the “new evidence” put forward by the claimant meets the test in **Ladd v Marshall**.

13. When it comes to the MHRA regulatory document and the seatbelt information from the Government website, there is no indication of why that evidence could not have been obtained with reasonable diligence for use at the original hearing. Both are readily available on the internet and in the public domain.

14. When it comes to the Motability contract, the claimant in her reconsideration application says that the respondent failed to disclose the RSA policy information to the Tribunal in the course of proceedings. There is no suggestion that the claimant made an application to the Tribunal for disclosure of that document prior to the final hearing. The claimant says that she had “recently acquired” the document via several lengthy calls to the RSA. There is no indication of why those calls could not have been made prior to the final hearing.

15. When it comes to the new evidence from witness C, the claimant says this arose from a discussion with witness C after the hearing. I do not find any compelling explanation as to why witness C could not have given that evidence at the final hearing itself.

16. On that basis, I find that there is no reasonable prospect of the claimant showing that the new evidence satisfies the test in **Ladd v Marshall**. It was available (or could by reasonable diligence have been obtained) for the final hearing. There are no reasonable prospects of showing that it would be in the interests of justice to reconsider the Judgment on the basis of that evidence.

17. Even if I am wrong about the evidence not meeting the **Ladd v Marshall** test my decision would have been the same. it seems to me there is a more fundamental problem with the reconsideration application. The application focuses on showing that the respondent actually did something wrong, either in breaching health and safety rules or her duty of care to employees in the way she was transported in her wheelchair in her vehicle. That is not the question that the

Tribunal was deciding in the Judgment. The question we were deciding was whether or not the claimant had made protected disclosures. The question is not whether in fact the respondent was acting in breach of duty or guidelines or legislation relating to transport in a vehicle. The question was whether the claimant had made a disclosure of information and, if so, whether she did so in the reasonable belief that that disclosure was in the public interest. Our finding in the Judgment was that neither was there a disclosure of information nor did the claimant reasonably believe that the disclosure was in the public interest. Even if the new evidence was admitted, it would not alter the Tribunal's decision. The claimant's reconsideration application is, I find, an attempt to persuade the Tribunal that the claimant did disclose information and did have a reasonable belief that disclosures PD1 and PD3 were in the public interest. It is, in essence, a challenge to the Tribunal's findings of fact and the conclusions based on those findings. That is, I find, an attempt to relitigate the case and to have a second bite at the cherry. The appropriate way to seek to challenge those decisions is by an appeal rather than reconsideration.

18. For those reasons, I find that there is no reasonable prospect of the claimant's application for reconsideration succeeding.

Employment Judge McDonald

Date: 8 May 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 13 May 2024

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FOR THE TRIBUNAL OFFICE