



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs Katia Segor

Secretary of State for Justice

RECONSIDERATION JUDGMENT

1. The claimant's applications dated 17, 18 and 27 December 2023 for reconsideration of the judgment sent to the parties on 3 December 2023 are refused.

REASONS

2. Employment Judge Alliott apologises to the claimant for the delay in dealing with her application for reconsideration. The application was only referred to Employment Judge Alliott on 12 April 2024 due to delays in the administration.
3. Whilst the application for reconsideration was made 14 days after the judgment was sent to the parties, the claimant applied for an extension of time to provide reasons on 18 December 2023 and sent in reasons on 27 December 2023. Having considered the reasons for the delay, Employment Judge Alliott considers that it is in the interests of justice to extend time.
4. Employment Judge Alliott notes that the respondent has made submissions concerning the 17 and 18 December 2023 applications but has not responded to the reasons in the email of 27 December 2023.
5. The reasons for the application for reconsideration are contained in 12 paragraphs.
6. Paragraphs 1 and 2 are an explanation of why the claimant needed more time to complete her application for reconsideration.
7. Paragraph 5 is a complaint about the difficulties in obtaining evidence. All such issues should have been dealt with prior to the full merits hearing with applications to the tribunal as necessary.
8. Paragraphs 3, 4, 6, 7 and 8 advance new evidence that at the relevant time the respondent was recruiting three Band 7 candidates and not two as set out in the judgment. The extra candidate was Mr Jamie Regan and a "LinkedIn" message appears to confirm that he was told he had been successful on 14 February 2023. Mr Jamie Regan was apparently recruited as another Deputy Head of Residence.

9. As per the IDS Employment Law Handbook “Employment Tribunal Practice and Procedure” at 17.42:

“Reconsideration of a judgment may be necessary in the interests of justice if there is new evidence that was not available to the tribunal at the time it made its judgment. The underlying principles to be applied by tribunals in such circumstances are the same as those which apply in civil litigation by virtue of the well-known case of Ladd v Marshall [1954] 3 All ER 745, CA. There, the Court of Appeal established that, 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. That said, the test under the rules is whether reconsideration is necessary in the interests of justice.

11. Further, as per the IDS handbook at 17.44:

“Tribunals will remain mindful of the fact that it is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed as a result of oversight or a miscall in their litigation strategy to adduce all the evidence available in support of their cases at the original hearing.”

12. And at 17.45:

“Furthermore, the Employment Tribunal will refuse an application for reconsideration on the basis of new evidence unless the new evidence is likely to have an important bearing on the result of the case. In Wileman v Minilec Engineering Ltd [1988] ICR 318, EAT, the EAT said the reason for this requirement is that, unless the new evidence is likely to influence the decision, then “a great deal of time will be taken up by sending cases back to an Employment Tribunal for no purpose”.

13. It is contended by the claimant that evidence that three Band 7 candidates were recruited in February 2020 and not two Band 7 candidates demonstrates that Ms Nicola Marfleet, Governor of HMP Woodhill, was deceitful and lacks credibility.

14. The LinkedIn messages submitted by the claimant are not the easiest to read as they have had the right hand section cut off. Nevertheless, it would appear that Mr Jamie Regan states that he had been successful at interview on 14 February 2023. Obviously enough that is the wrong year as the recruitment process that was relevant to this case was in February 2022. However, there appears to be part of Mr Regan’s CV which refers to him being a Band 7 Governor – Deputy Head of Residence from March 2022 until April 2023. As such, I am prepared to accept that Mr Regan may have put the wrong year and was recruited in February 2022 as a Band 7 grade.

15. In my judgment, the fact that there may have been three Band 7 grades recruited in February 2022 was discoverable by the claimant with reasonable diligence prior to the full merits hearing on 9 and 10 October 2023.
16. Furthermore, if it were established that three Band 7 grades were recruited in February 2022 rather than two, in my judgment, this is not likely to have an important bearing on the result of the case. The fact remains that the recruitment of new Band 7 grades allowed a new Band 7 grade to replace Mr Joe Lawson from the Offender Management Unit. Mr Joe Lawson was then able to fill the vacant band 7 position in the Separation Unit which meant that Mr Tangie, who was acting up as band 7, reverted to his substantive Band 5 role. The return of Mr Tangie to his substantive Band 5 role inevitably meant that the claimant, who was acting up in that Band 5 role, would have to revert to her substantive Band 4 position.
17. Further, in my judgment, this new evidence, if established, would not undermine the credibility of Ms Nicola Marfleet.
18. Paragraph 9 of the reasons alleges that documents submitted by the respondent had been altered or were inaccurate. There is no credible evidence for this being advanced and consequently, in my judgment, it is not in the interests to reconsider on this ground.
19. Paragraph 10 refers to a judgment of Employment Judge Clarke KC. This was available to the claimant prior to the full merits hearing on 9 and 10 October 2023 and could have been referred to by her during the course of the hearing had she wanted to do so. In my judgment, it is not in the interests of justice to reconsider the judgment on this ground.
20. Paragraph 11 refers to a document in the hearing bundle which the claimant could have referred to at the hearing as necessary. This is also a complaint that the case of Plaistow v Secretary of State for Justice, case number 3400502/2016, was not considered by the tribunal. The tribunal has already given its reasons for not doing so. In my judgment, it is not in the interests of justice for the judgment to be reconsidered on this ground.
21. For the aforementioned reasons, Employment Judge Alliot considers that there is no reasonable prospect of the original decision being varied or revoked and the contentions made in paragraph 12 are rejected.
22. Consequently, this application for reconsideration is refused.

Employment Judge Alliot

Date: ...1 May 2024.....

Sent to the parties on:
14 May 2024.....

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For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>