



EMPLOYMENT TRIBUNALS

Claimant: Mrs Nadia Hossein

Respondent: The Governing Body of Horndean Junior School

JUDGMENT

The respondent's application dated **15 April 2024** for reconsideration of the judgment sent to the parties on **3 April 2024** is refused.

REASONS

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

1. In her application to the employment tribunal for a reconsideration, the claimant has set out a number of findings made by the employment tribunal which she considers are wrong. The matters which she criticises are findings of fact and in respect of those matters a reconsideration is not appropriate.
2. The claimant has also made reference to a number of matters which she says she considers amounted to an apparent bias by the employment judge. These include comments which she alleges were made during the course of the hearing about the claimant not touching her holy book when she took the oath, and comments about the claimant being a simple Muslim, for example. Whilst employment judge Rayner does not agree with claimant about any such comments, the appropriate forum for her to raise these matters is by way of appeal, and not by way of an application for reconsideration.
3. The claimant has provided new evidence in the form of a transcript of her complaint made to the police on the 27 January 2023. The claimant had resigned on the 21 January 2023 and it is accepted that this report was not before the tribunal and that it was potentially relevant, in that it

records allegations that the claimant had made against the respondent and the head teacher, amongst others.

4. However, the report is simply a record of the fact that the claimant had made complaints and a record of a subsequent interview with the claimant in which the police have recorded some comments about the claimant's demeanour at the time. The claimant made complaints of a very similar nature to the respondent when she met with Mr Merrifield a few days after she had spoken to the police and those allegations were the subject matter of her grievance and the subsequent appeal against the grievance outcome, and formed the basis of the complaints which she made to the employment tribunal.
5. There is no dispute that the claimant raised these concerns and the fact of her having made these complaints is specifically addressed within the judgement. The conclusion of the ET, that none of the complaints which she made internally were well founded and have therefore been dismissed, would not have been different had the claimant raised this evidence supporting her assertion that she had also reported the matter to the police.
6. The hearing of this case took place over a number of days starting on the 7 January 2024. The case had been case managed at a hearing before on the 11 August 2023 and orders had been made for disclosure of documents by the 9 October 2023. Following disclosure and preparation of a bundle, the claimant produced additional documents which the respondent agreed to include and which were included within the bundle.
7. The claimant did not contact the police to ask about a transcript of her report and subsequent interview until the 29 December 2023. She wrote to the tribunal on the same day, stating that she had requested a reference number and been advised of the need to complete the form and had applied for the report. The claimant has not explained why she did not contact the police at an earlier stage to ask for the report, and does not say in her letter why she considers the report would have made any difference to the outcome of her case.
8. It is accepted that the claimant, as a litigant in person and as a person suffering with some health issues, including anxiety, found the process of litigation challenging, but she was able to cooperate fully with the process for disclosure and for obtaining documentation. In the absence of any reason for not having asked the police at an earlier stage for the report, I conclude that the new evidence is evidence which could easily have been obtained at a much earlier stage by the claimant. She knew of its existence and once she contacted the police, the process for obtaining it was relatively straightforward. The claimant does not say when she obtained the notes from the police, but it is accepted that she did not have them at the time of the hearing.
9. I have reminded myself of the legal principles applicable to an application for reconsideration made under rule 70,71 and 72 of the

10. First I remind myself that the only grounds for reconsideration is that it is in the interests of justice to reconsider.
11. I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board* [1975] ICR 395) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray & Vials* [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”
12. I remind myself that this can include circumstances where new evidence has become available which was not available at the time the judgement was made. I have reminded myself of the principles set out in *Ladd V Marshall* 1954 3 All ER 745 CA, in which the Court of Appeal established that in order to justify the reception of fresh evidence it was necessary for the claimant to show, first, that the evidence could not have been obtained with reasonable diligence for use of the original hearing; secondly that the evidence is relevant and would probably have had an important influence on the hearing and, thirdly that the evidence is apparently credible.
13. in *Outasite VB Limited v Brown* 2015 ICR D11 EAT, the EAT held that the principles set out in *Ladd v Marshall* would still apply. I have reminded myself that it is not usually appropriate to allow a party a second opportunity to adduce new evidence simply because they fail as a result of an oversight to have adduced all the evidence necessary at the appropriate time.
14. I also remind myself that it is only in the interests of justice to reconsider on the basis of new evidence where that new evidence is likely to influence the decision. I reminded myself of the dicta of the EAT in *Wileman v Minilec Engineering Ltd* 1988 ICR 318 EAT in that respect.
15. Having considered the application made in detail, having taken into account the fact that the claimant was a litigant in person and having

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taken into account what she says about her own health within her reconsideration application and having considered the new evidence which she has submitted, I conclude that it is not in the interest of justice to reconsider of the judgement as there is no reasonable prospect of any part of the original decision being varied or revoked.

16. Whilst the new evidence is credible it could have been obtained with reasonable diligence at an earlier stage. although it was relevant it would not have had an important influence on the hearing.
17. The claimant's application for a reconsideration of the judgement is therefore refused

Employment Judge **Rayner**
Date: 13 May 2024

Judgment sent to the Parties on 14 May 2024

For the Tribunal Office