Case No: 2302003/2021
2302368/2021
2302706/2022
2303067/2022
2303993/2022
2303721/2022
2301485/2023

EMPLOYMENT TRIBUNALS

Claimant: Ms C Zhao

Respondent: Govia Thameslink Railway Ltd

JUDGMENT

The Claimant's application dated 25 April 2024 for reconsideration of the judgment sent to the parties on 12 April 2024 is refused.

REASONS

1. The Claimant brought eight claims against the Respondent. The first was withdrawn. The remaining seven were consolidated and were heard by the Tribunal over seven days in March 2024.

2. For the reasons which were given orally at the conclusion of that hearing, all claims were dismissed. The Claimant requested written reasons, and the judgement with written reasons was sent to the parties on 12 April 2024.

3. The Claimant now applies for a reconsideration of that judgment. The grounds are set out in a document sent to the Tribunal on 25 April 2024.

4. The Claimant's document setting out the grounds on which reconsideration is sought is lengthy. It contains numerous quotes from both the Tribunal's reasons and documents within the hearing bundle. It uses intemperate language – in particular, accusing the Employment Judge (on several occasions) of "lying", and of having made a decision "inappropriate with bias". There is no reasoned explanation within the document for those

allegations. They are baseless. It should be noted also that although the Claimant's criticisms are levelled specifically at the Judge, the judgment and reasons reflect the unanimous decision of the three-member Tribunal who heard the Claimant's claims.

5. It is somewhat difficult to ascertain exactly on what basis the Claimant says that the judgment ought to be reconsidered. Doing the best that I can, and expressing the points being advanced in somewhat more neutral terms than those adopted by the Claimant, it appears that the bases on which reconsideration is sought can be summarised as follows:

    a. The Respondent accepted that the dismissal of the Claimant was a detriment for the purposes of section 27 of the Equality Act 2010, so the complaint that the dismissal was an act of victimisation ought to have succeeded (section 2 of the Claimant's document).
    b. The Tribunal failed to take into account the ACAS Code of Practice (sections 3 and 5).
    c. The Tribunal erred in concluding that the Respondent acted reasonably in concluding that the Claimant had breached its anti-harassment policy, by sending an email it characterised as racist. This infected the Tribunal's conclusions regarding the claims of automatically unfair dismissal, ordinary unfair dismissal, and victimisation (section 4).
    d. The Tribunal's conclusion that allegation 2.1.2 on the list of issues would necessarily have failed because it predated the protected disclosure relied upon was wrong, in that the Claimant had made two claims to the Employment Tribunal by that time (section 5.6)
    e. The Tribunal accused the Claimant of breaching the GDPR (section 6.2).
    f. Flowing from that, the Tribunal's conclusion regarding allegation 2.1.3 on the list of issues was wrong, because the Claimant was subjected to a detriment by being wrongly accused of breaching the GDPR (section 6).
    g. The Tribunal's conclusion that allegation 2.1.4 on the list of issues must necessarily have failed because it predated the protected disclosures relied upon was wrong, in that the Claimant had made two claims to the Employment Tribunal by that time (section 7).
    h. The Tribunal's conclusion regarding allegation 2.1.4 was inappropriate and biased (section 7).
    i. The Tribunal's conclusion regarding allegation 2.1.5 and 4.2.4 on the list of issues was incorrect, as it was appropriate for the Claimant to email managers about her ongoing Tribunal litigation (section 8).
    j. The Tribunal erred in the findings it made regarding the Respondent's cash regulations (section 9).
    k. The Tribunal erred in referring to the Claimant has having been "re-engaged" following her first dismissal in 2020, and consequently in

its conclusions regarding the complaint of unauthorised deduction from wages (section 10)

6. In the interests of keeping this document concise, I have cross-referred the list of issues. That list of issues is set out in full at paragraph 4 of the Tribunal's reasons.

7. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

8. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

9. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.

10. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

> "34. […] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.
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> 35. Where […] a matter has been fully ventilated and properly

> argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

11. The Claimant's application was received within the relevant time limit. I therefore consider it under Rule 72. I take each of the points I have identified above in turn:

a) The Respondent accepted that the dismissal of the Claimant was a detriment for the purposes of section 27 of the Equality Act 2010, so the complaint that the dismissal was an act of victimisation ought to have succeeded (paragraph 2 of the Claimant's document).

12. This is, with respect to the Claimant, a misunderstanding of the Tribunal's reasons. The Respondent accepted (entirely properly) that dismissing the Claimant was a "detriment" within the meaning of section 27 of the Equality Act 2010. That concession is recorded in paragraph 239 of the Tribunal's reasons. But that is not enough for the claim to succeed. In order to succeed, the Claimant would have had to have been subjected to a detriment because she had done a protected act. Paragraph 240 of the reasons goes on to explain the Tribunal's reasons for concluding that reason for dismissal was not that the Claimant had done a protected act.

13. There is no reasonable prospect of the judgment being varied or revoked on this basis.

b) The Tribunal failed to take into account the ACAS Code of Practice (paragraphs 3 and 5).

14. The Claimant refers to the ACAS Code of Practice, but then quotes extensively from the (non-statutory) ACAS Guidance on Conducting Workplace Investigations. The quote she sets out in her document are not from the ACAS Code of Practice.

15. There is no reasonable prospect of the judgment being varied or revoked on this basis.

c) The Tribunal erred in concluding that the Respondent acted reasonably in concluding that the Claimant had breached its anti-harassment policy, by sending an email it characterised as racist. This infected the Tribunal's conclusions regarding the claims of automatically unfair dismissal, ordinary unfair dismissal, and victimisation (paragraph 4 of the Claimant's document).

16. This is a reference to an email the Claimant sent to Mr Rudman of the

Respondent on 13 July 2022. The Tribunal found that that email was the operative reason for the Claimant's dismissal. The Tribunal considered the Claimant's evidence regarding the email, as well as the text of the email itself. The Claimant's evidence is summarised in paragraph 89 of the reasons. The Tribunal's conclusion regarding the email is set out in paragraphs 240.3 to 240.5.

17. The high point of the Claimant's application for reconsideration appears to be that she has shared the email with a number of friends and the Citizens Advice Bureau, and that they have all told her that the sender was not racist. That is, of course, not evidence which would bear any weight. It is hearsay. Even if it were given in the form of written statements from the individuals referred to, endorsed with statements of truth, and made by witnesses willing to attend a hearing to have their evidence tested, it would bear very little weight. That is because it is a matter of opinion. And even then, the Claimant does not explain why any such evidence could not have been adduced at the final hearing.

18. Bearing in mind the importance of finality in litigation, there is no reasonable prospect of the judgment being varied or revoked on this basis.

d) The Tribunal's conclusion that allegation 2.1.2 on the list of issues would necessarily have failed because it predated the protected disclosure relied upon was wrong, in that the Claimant had made two claims to the Employment Tribunal by that time (paragraph 5.6)
g) The Tribunal's conclusion that allegation 2.1.4 on the list of issues must necessarily have failed because it predated the protected disclosures relied upon was wrong, in that the Claimant had made two claims to the Employment Tribunal by that time (paragraph 7).

19. These two points are considered together, because they appear to give rise to the same issue. Allegations 2.1.2 and 2.1.4 on the list of issues were complaints of protected disclosure detriment.

20. The protected disclosures relied upon by the Claimant were set out in paragraph 1.1 of the list of issues. The earliest of those was on 27 June 2022. The Claimant appears to have conflated the concept of a protected act (for the purposes of the complaint of victimisation) with that of a protected disclosure. The issuing of her first two claims, on 23 September 2020 and 6 June 2021, were both accepted by the Respondent as being protected acts for the purposes of the complaint of victimisation. But they were not relied upon as protected disclosures for the purposes of the protected disclosure detriment claims.

21. There is no reasonable prospect of the judgment being varied or revoked on this basis.

e) The Tribunal accused the Claimant of breaching the GDPR (paragraph 6.2)

22. Within her application, the Claimant quotes from paragraph 208 of the Tribunal's reasons. Paragraph 208 does not contain a finding that the Claimant was in breach of the GDPR. Nor does any other part of the reasons. For completeness, neither do the Tribunal's reasons (either at paragraph 208 or elsewhere) contain a finding that the Respondent has a policy on the use of mobile phones. It refers to a security briefing on the Respondent's Sharepoint regarding the use of mobile phone cameras at work. No conclusion is expressed either way as to whether the Respondent had a policy regarding the use of mobile phone cameras to take pictures. Paragraphs 208 and 209.2 refer specifically to Mr Cefallielo's understanding.

23. There is no reasonable prospect of the judgment being varied or revoked on this basis.

f) Flowing from that, the Tribunal's conclusion regarding allegation 2.1.3 on the list of issues was wrong, because the Claimant was subjected to a detriment by being wrongly accused of breaching the GDPR (paragraph 6).

24. The Tribunal's conclusions on this are set out in paragraph 209 of the reasons. With the exception of the preceding point, the Claimant has not set out any reason why she says that the conclusion was wrong.

25. There is no reasonable prospect of the judgment being varied or revoked on this basis.

h) The Tribunal's conclusion regarding allegation 2.1.4 was wrong and biased (paragraph 7).

26. I have already dealt with the Claimant's conflation of protected disclosure and protected act.

27. The Tribunal's conclusions on this are set out in paragraphs 211 and 212 of the reasons. Once again, the Claimant has not explained why she says that the conclusion was wrong, apart from the fact that she disagrees with it. The Tribunal preferred the evidence of Mr Bailey, for the reasons set out.

28. There is no reasonable prospect of the judgment being varied or revoked on this basis.

i) The Tribunal's conclusion regarding allegation 2.1.5 and 4.2.4 on the list of issues was incorrect, as it was appropriate for the Claimant to email managers about her ongoing Tribunal litigation (paragraph 8).

29. The Claimant suggests that Mr Basma was wrong, in his email to her dated 13 October 2022, to refer to "previous points throughout the year" when the Claimant had been told not to share details of Tribunal claims with the management team. She suggests within her application that her first claim against her line manager, Ms Yerrell, was not filed until 8 August 2022. That was, of course, not her first claim. The Tribunal found that Mr Basma had asked the Claimant not to send information regarding her Tribunal claims to the management team on 25 April 2022 (paragraph 48 of the Reasons).

30. The Claimant also suggests that the individuals she was emailing were "relevant parties" to the litigation. None of them were parties to the litigation, which was brought only against the Respondent. The Tribunal's conclusions are set out in paragraph 216 of the reasons.

31. There is no reasonable prospect of the Judgment being varied or revoked on this basis.

<u>j) The Tribunal erred in the findings it made regarding the Respondent's cash regulations (paragraph 9).</u>

32. The Tribunal quoted the relevant part of the Respondent's financial regulations in paragraph 13 of its reasons. The Tribunal's conclusions are set out at paragraph 220.2.

33. The high point of the Claimant's application appears to be that further evidence could have been adduced from other station staff which would have backed her interpretation of the Respondent's financial regulations – as she puts it "Anyone could approach any train station to ask what is the standard process and is there any other way to do it".

34. Once again, as presented that is no more than hearsay, which would bear little weight. Insofar as it is a suggestion that there is further evidence that the Claimant could have adduced, she does not explain why any such evidence could not have been adduced at the final hearing. Finally, even if the Tribunal had reached a different conclusion regarding the meaning of the relevant part of the Respondent's financial regulations, that would not have changed its conclusion regarding the substantive allegation in the claim. The relevant allegation was that the Respondent had blamed the Claimant for the protected disclosure she had made (2.1.1). Whether the Claimant was objectively right about the meaning of the Respondent's financial regulations, the Tribunal's underlying conclusion is that she was not being blamed for raising issues about the way the safe code should be passed between the Claimant and her colleague.

35. Bearing in mind the importance of finality in litigation, there is no reasonable

prospect of the Judgment being varied or revoked on this basis.

k) The Tribunal erred in referring to the Claimant has having been "re-engaged" following her first dismissal in 2020, and consequently in its conclusions regarding the complaint of unauthorised deduction from wages (paragraph 10)

36. Paragraph 28 of the Tribunal's reasons uses the word used by Ms Jacobs in her letter withdrawing the Claimant's grievance, which says that she would "re-instate" the Claimant's employment.

37. Paragraph 254 of the Reasons uses the word re-engagement, which is a more apt description of what happened following the dismissal in 2020. That is, the Claimant returned to work for the Respondent, but not at the same location.

38. In any event, paragraph 255 of the reasons explains why the Claimant was neither reinstated nor reengaged within the meaning of the relevant provisions of the Employment Rights Act 1996.

39. There is no reasonable prospect of the Judgment being varied or revoked on this basis.

Conclusion

40. Having carefully considered the Claimant's application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

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Employment Judge Leith
Date: **22 May 2024**

JUDGMENT SENT TO THE PARTIES ON
Date: **30 May 2024**
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FOR THE TRIBUNAL OFFICE