



EMPLOYMENT TRIBUNALS

Claimant: Ms Z Adan

Respondent: Barnet, Enfield & Haringey Mental Health NHS Trust

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application dated 3 May 2024 for reconsideration of the judgment dated 24 April 2024 sent to the parties on 25 April 2024 is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant's complaints of direct discrimination on the grounds of race, religion and/or belief; and disability; harassment on the grounds of race, religion and/or belief; victimisation; detriment for making a public interest disclosure; constructive unfair dismissal and notice pay were dismissed by a reserved judgment sent to the parties on 25 April 2024.
2. The claimant made an application for reconsideration by email dated 3 May 2024.

The Law

3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules").
4. Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
5. Rule 71 provides that an application for reconsideration under Rule 70 must be made in writing (and copied to all other parties) within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Rule 72(1) provides that where an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the Tribunal shall inform the parties of the refusal.
7. 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.
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.”
8. The claimant’s application was received within the relevant time limit in accordance with Rule 71. The application has also been copied to the respondent.
9. The application for reconsideration appears to be made on the following grounds (in summary);
 - a. As a litigant in person, the claimant was not on an equal footing as the respondent was professionally represented by Counsel.
 - b. The claimant was unfairly prejudiced and at a disadvantage because on day 2 she had technical issues with her laptop and was unable to access her notes and questions;
 - c. The Tribunal failed to make adjustments for the claimant to engage in the proceedings given that Counsel had a functional laptop with all her questions and notes;
 - d. The Tribunal “stuck slavishly” to the List of Issues which prevented the claimant from asking questions the only way she knew as a litigant in person.
 - e. The judgment has made various omissions in the findings of fact.

10. I deal with each ground as follows;

a

It could well be argued that because the respondent was professionally represented by a barrister, this put the claimant at some disadvantage.

However, self-representing litigants are a regular feature of the Tribunal and other court proceedings. The Tribunal recognised the claimant was a litigant in person and that throughout this case she has acted without legal representation. At this hearing she was supported by her ex-Manager, Miss Simmons Safo in the capacity of a Mackenzie Friend. The Tribunal was careful to take steps throughout the hearing to ensure the parties were on equal footing and that the claimant had a fair hearing in pursuance of the overriding objective. At the start of the hearing, the Judge explained to the claimant the Tribunal procedure; the legal issues to be determined; the process of giving evidence and cross examination. The claimant was advised and encouraged to prepare written questions in advance for cross examination of the respondent witnesses. After the evidence was concluded the claimant was given guidance on how to present final submissions to the Tribunal. During the course of the hearing, the Judge gave guidance and support to the claimant to formulate her questions to the witnesses and also asked questions of the witnesses to ensure the issues were adequately covered. During the hearing the claimant came across as an intelligent and articulate person who was able to follow the proceedings well.

b & c.

On the afternoon of day 3 of the hearing, (not day 2 as claimed by the claimant) the claimant experienced technical issues with her laptop which was freezing which prevented her from continuing with her cross examination. The claimant was given time to try and resolve the issue but was unable to do so. The claimant explained she had written her questions on a sheet of paper which she could not find in her papers. To ensure the claimant was given a fair hearing, the Tribunal adjourned the hearing that afternoon to allow the claimant to sort the technical issue and to be prepared for the next day. On the following morning, the claimant was content to continue. The claimant used her laptop and did not raise any issue that she was at a disadvantage and neither did she apply for an adjournment. During cross examination of the respondent witnesses the claimant was given full opportunity to ask questions, which she did with the assistance of Miss Simmons Safo.

d.

The legal issues to be determined by the Tribunal which reflected the claimant's complaints had been fully discussed and had been explained in detail at a preliminary hearing for case management held on 10 March 2023. This was clear to both parties from the Tribunal Order and at the outset of this hearing. This case was listed for 5 days. Accordingly, the Tribunal had to manage and conclude this case within the time allocated to avoid being part heard. At the outset of the hearing, the parties were reminded of the agreed List of Issues which were not amended; to focus on these and to ensure that each factual and legal issue was adequately covered in evidence. Sticking to the List of Issues did not in any way prevent or impinge on the claimant's ability to ask questions in the way she wanted. The claimant had the opportunity to ask questions of all witnesses and advance all arguments, which she did.

e.

The claimant seeks to challenge findings of fact that were made with conclusions that the Tribunal reached from those findings. This ground is an attempt to relitigate what was explored in detail at the hearing. It is not the purpose of reconsideration to allow a party to dispute a determination of a finding of fact that it disagrees with or an opportunity to rehearse the arguments that have already been made. It is a fundamental requirement of litigation there is certainty and finality.

11. For the reasons set out above, there is no reasonable prospect of variation or revocation of the original decision. The application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
12. In the circumstances the application for reconsideration of the judgement is rejected on the basis that there is no reasonable prospect of it being varied or revoked. Accordingly, the application for reconsideration is therefore refused.

**Employment Judge Bansal
6 June 2024**

JUDGMENT SENT TO THE PARTIES ON

11 June 2024

FOR THE TRIBUNAL OFFICE