



EMPLOYMENT TRIBUNALS

Claimant: Ms Winnie Hanchard

Respondent: Oxleas NHS Foundation Trust

UPON APPLICATION made by letter dated 14 February 2024 to reconsider the judgment by consent dated 1 November 2023 and sent to the parties on 14 November 2023 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

The judgment dated 1 November 2023 is confirmed.

1. By a letter dated 6 October 2023, the respondent wrote to the Tribunal to request a Judgment by Consent on agreed terms, which specifically stated that recoupment would apply and that the respondent was seeking a Judgment by Consent as opposed to settlement because it is obliged to seek approval from HM Treasury and NHSE before entering into settlement agreements for ex gratia payments, and no such approval was needed if the respondent was ordered to pay an agreed sum by the Tribunal.
2. Judgment by Consent was dated 1 November 2023 and sent to the parties on 14 November 2023. The judgment specifically stated that recoupment would apply to the award.
3. By an email dated 13 November 2023, the claimant forwarded the respondent's email of 6 October 2023 to the Tribunal in an attempt to speed up the resolution of the matter.
4. By a letter dated 20 January 2024 the claimant gave an indication that she wanted to appeal and to ask for her compensation back.
5. The claimant also wrote to the Tribunal on 14 and 15 February 2024. In the letter dated 15 February 2024, the claimant added that she understood that there may be some money recouped but not all of it. She stated that she believed a smaller amount would be recouped. She added: "I was advised by the respondent to seek legal advice which I tried...It was so hard to get legal advice at the stage I was at having won at the tribunal without paying for this so I sought information from Citizen's Advice."
6. On 10 June 2024, Acting Regional Employment Judge Andrews wrote to the claimant to inform her that the rules relating to recoupment from award of compensation are set out in the relevant regulations and there is no judicial discretion as to their application and that if there was an agreed settlement between the parties in a format to which those rules apply, then recoupment would inevitably follow. She informed the claimant that although her letters referred to an appeal, they would be treated as a

- request for the judgment to be reconsidered. The claimant was asked to send in any correspondence in which the respondent told her that a judgment by consent was the only way in which the matter could be settled.
7. The claimant replied and forwarded a number of emails from the respondent to the claimant some of which were without prejudice.
 8. The respondent sent a further letter dated 14 June 2024 which stated as follows: "It is a matter of fact that the Trust did not have nor was it able to receive the required HM Treasury approval for discussions to be had between the parties in order to reach agreement to settle this matter by way of a COT3 or otherwise. The Respondent was therefore unable to agree any remedy with the Claimant that went beyond contractual entitlement in compensation relating to termination of employment, as the Trust is required to comply and operate within strict regularly parameters. The Claimant was informed that the Trust was therefore only able to settle this matter and avoid the parties progressing to a Remedy Hearing by way of a Court Order, which would be subject to recoupment, as it was only able to offer awards that could be granted by the Tribunal in the event the parties proceeded to a Remedy Hearing. In relation to recoupment, it is the Respondent's position that it was made clear to the Claimant, by way of the wording of the Judgment by Consent which was agreed between the parties, that recoupment would apply as a matter of law and the level of recoupment was not something that was within the Trust's knowledge as it was to be confirmed by the Department of Work and Pensions (DWP).
 9. The claimant then sent a further email asking for a reconsideration of the judgment and for the monies sent to DWP to be sent back to her, and for the respondent to agree to a consent order excluding recoupment.
 10. The Tribunal is satisfied that the claimant was made aware by the respondent that recoupment would apply to the judgment by consent and was encouraged to seek legal advice of the consequences of the Judgment by Consent, which, it was explained to the claimant, was the only way the respondent could proceed without Treasury Approval and without attending a remedy hearing. There is therefore no basis on which the judgment by consent can be revoked or amended and the judgment by consent is confirmed.

Employment Judge Rice-Birchall

13 August 2024