Case No: 2303549/2022

EMPLOYMENT TRIBUNALS

Claimant: **Miss Desiri Okobia**

Respondent: **Leigh Academies Trust**

JUDGMENT

The Claimant's application dated 7 May 2024 for reconsideration of the judgment sent to the parties on 23 April 2024 is refused.

REASONS

The issue

1. Whether there is a reasonable prospect of the original of the original decision being varied or revoked.

The facts

2. The Tribunal's factual findings are set out in the Tribunal's judgment dated 6 March 2024.

Relevant legal principles

3. The rules relating to reconsideration applications are set out in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013.

4. The Tribunal may reconsider any judgment where it is in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again. If there is no reasonable prospect of the original decision being varied or revoked, the application is to be refused.

5. There is an underlying public interest in the finality of litigation. Reconsideration is therefore not a means by which a disappointed party to litigation can get a "second bite of the cherry" if they do not agree with the original decision. In Flint v Eastern Electricity Board [1975] ICR 395 (High Court, Queen's Bench Division) it states at 404: *"But over and above all that (the interests of the parties), the interests of the general public have to be considered too. It seems to me that it is very much in the interests of the general public that proceedings of this kind should be as final as possible; that is should only be in unusual cases that the employee, the applicant before the tribunal, is able to have a second bite at the cherry."*

6. In Newcastle City Council v Marsden [2010] ICR 743 (EAT) it was said, at paragraph 17: *"In particular, the weight attached in many of the previous cases to the importance of finality in litigation—or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry—seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal)."*

Conclusion

7. The Claimant is not prejudiced by the approach taken by the Tribunal which was in accordance with Laing v Manchester City Council [2006] ICR 1519, the relevant legal principle being set out at paragraph 94 of the Tribunal's judgment. As Elias J (as he was then) further stated in Laing at paragraph 76 *"… where the Tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever".*

8. The submissions made by the Claimant in the application for reconsideration amount to no more than a disagreement with the findings of fact and the conclusions of the Tribunal. The Tribunal heard evidence over two days from witnesses who were questioned under oath. The parties made submissions. The Tribunal carefully deliberated on the third day before reaching its conclusions on the issues it was required to decide. The Tribunal was satisfied that the Respondent had shown that its treatment of the Claimant was in no sense whatsoever because of race or related to race. An application for reconsideration is not an opportunity for the Claimant to have a second bite of the cherry.

9. There is no reasonable prospect of the original decision being varied or revoked and the Claimant's application for reconsideration is accordingly refused.

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Employment Judge Pritchard

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Date: 14 May 2024