Case No: 3314001/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss O A Ajiga	**v**	(1) The Chimneys Ltd (2) Elysium Health Care (3) Tafara Care Services Ltd

Heard at: Cambridge On: 30 October – 2 November 2023

Before: Employment Judge L Brown

Members: Mr Allan and Ms Allen

Appearances
For the Claimant: In person
For the Respondents: (1) Mr Lawrence - Counsel
(2) Mr Lawrence - Counsel
(3) Mr Busumani (in person)

RECONSIDERATION JUDGMENT

The Claimants' application dated the **17 April 2024** for reconsideration of the costs judgment sent to the parties on the **3 April 2024** ('the Costs Judgment') is refused.

REASONS

1. I apologise for the considerable delay in dealing with the Claimants' application for a reconsideration. Whereas the Claimants' application was submitted on **17 April 2024,** it was not placed before me until **25 June 2024,** over two months later. I understand that this was due to administrative delays within the Tribunal.
2. Applications for a reconsideration of a Tribunal judgment is an exception to the principle that a decision of the Employment Tribunal is final, save for appeals on a point of law. The test when dealing with an application for a

reconsideration is contained within Rule 70 Employment Tribunal Rules of Procedure which provides:

"Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

3. In **Outasight VB Ltd. v Brown UK EAT/0253/14**, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed as follows:-

   "The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation."

   These principles were recently affirmed by His Honour Judge Shanks in **Ebury Partners UK Ltd v Acton Davis [2023] EAT 40.**

4. The Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** observed (paragraph 21) that the discretion to act in the interests of justice is not open ended and should be exercised in a principled way, and it emphasized the importance of finality.

5. Moreover in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16/DA** the President of the Employment Appeal Tribunal held:

   "*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, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.*

   35. Where, as here, 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…"

Reconsideration Application

6. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties. The Reserved Costs Judgement was sent to the parties on **4 April 2024** and accordingly the Claimants' application **(17 April 2024)** has been made in time.

7. The Claimant has produced a 69 page document with 257 paragraphs which I have read and considered carefully and which challenges the basis for both our Liability Judgment and our Costs Judgment. However this application for Reconsideration only relates to the Costs Judgment.

8. Most of the application makes wide ranging allegations against myself as the Judge of the hearing including allegations of bullying, and racism and in a general sense asserts 'conduct bias' in relation to the way I managed the hearing and in particular the Claimants' behaviour during the hearing.

9. In general terms I reject any assertion that my conduct of the hearing as the Judge or the decisions reached by the Tribunal were infected by any type of bias, and in particular either apparent bias or conduct bias as it is sometimes called.

10. Much of the application also amounts to a challenge about the Tribunals findings of fact.

11. Prior to the last four paragraphs, running from paragraph 253 to 257, there is a heading entitled '*Application for Costs.'* However this part of the document mostly focuses on the assertion that the words *'piss and poppycock'* were never used by her when describing another Judge at a preliminary hearing.

12. The Claimant also states that she *'has not been gainfully employed in the united kingdom,*' but then in the same paragraph 254 states that '*CIP did inform et j about non-assignment of shifts which coincidentally assigned during 4 day hearing but declined due to compliance with hearing'* which appears to state, in contradiction to her assertion she has not been gainfully employed, that she was employed, but that she was then not assigned some shifts or that she declined shifts in order to attend the hearing. This part of the document alludes in an implied way to her inability to pay a costs order but lacks any helpful detail. In any event our obligation to consider her ability to pay a costs order is dealt with in our Costs Judgment.

13. In essence throughout the 69 pages the Claimant takes issue with this Tribunals first Judgment which gives a very detailed description of what occurred during the hearing, and which is set out in detail in our first liability Judgment dated the 3 January 2024 ('the Liability Judgment') and which was repeated in summary form in our Costs Judgment, and she disputes that her conduct of her claim and her conduct during the hearing satisfied the legal tests this Tribunal applied when making the order for costs.

14. The Tribunal has already provided very detailed reasons for its findings and the conclusions reached in the Liability Judgment and the Costs Judgment and I do not repeat them here.

15. The application does not identify any error of law, any procedural error, or any other matter which would make reconsideration necessary in the interests of justice.

16. Accordingly, the application is refused under Rule 72(1) of the Employment Tribunal Rules of Procedure on the basis that there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge L Brown
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25 August 2024

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JUDGMENT & REASONS SENT TO THE PARTIES
ON 29 August 2024

FOR EMPLOYMENT TRIBUNALS