# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms J Wilkinson**

**Respondent:** **Cleveland Fire Authority**

**HELD Newcastle upon Tyne Hearing Centre** **ON: 5 August 2024**

**BEFORE: Employment Judge Johnson (sitting alone)**

**REPRESENTATION:**

**Claimant:**
**Respondent:**

# JUDGMENT ON CLAIMANT'S APPLICATION FOR RECONSIDERATION

1. The claimant's application for a reconsideration of the Judgment promulgated on 14 June 2024 is refused. It is not in the interests of justice for there to be a reconsideration.

# REASONS

1. By Judgment with written reasons promulgated on 14 June 2024, following a hearing on 3 and 4 June 2024, the claimant's complaints of unlawful sex discrimination contrary to sections 13, 26 and 27 of the Equality Act 2010 were struck out and dismissed. The Employment Tribunal found that those claims were an abuse of process and fell foul of the "res judicata" principles and of the principles established in **Henderson v Henderson.**

2. By a letter dated 28 June 2024, the claimant submitted a formal application for a reconsideration of that Judgment. The claimant's letter states that it is in the interests of justice for there to be a reconsideration and sets out the following grounds:-

   2.1. I am making an application for the reconsideration of the parts of the Tribunal's decision that I disagree with and would like to challenge.

   2.2. I am making an application for reconsideration of the Judgment based on the fact that I had poor representation from counsel and I believe I was hung out to dry.

   2.3. I believe that the evidence given on the day was one sided in favour of the respondent and I would like to provide some facts to try and balance the evidence and show that it was the respondent who at every stage of the grievances and appeal abused the processes in a deliberate attempt to prevent me from submitting my claims to the Tribunal within the timescale.

   2.4. There are errors within the information that the panel had presented in the Judgment.

   2.5. I tried to provide important information to the panel when counsel was struggling to provide the correct answer and Judge Johnson prevented me from speaking, shouting at me in an aggressive manner to "get your hand down." This was intimidating and uncalled for, this was after he had spoken about how user friendly the Tribunal is now.

3. Under Rule 70-73 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the Tribunal may reconsider any Judgment where it is necessary in the interests of justice to do so. On reconsideration the original decision may be confirmed, varied or revoked.

4. The Tribunal may only reconsider any Judgment "where it is necessary in the interests of justice to do so". The rules themselves do not set out any particular matters to which the Tribunal should have regard in considering whether it is in the interests of justice for there to be a reconsideration.

5. Under the Tribunal Rules 2004 there were five specific grounds upon which the Tribunal could review a Judgment, namely:-

   5.1. That the decision was wrongly made as a result of an administrative error.

   5.2. That a party did not receive notice of the proceedings leading to the decision.

   5.3. That the decision was made in the absence of a party.

   5.4. That new evidence should become available since the conclusion of the Tribunal hearing to which the decision related, the existence of which could not have been reasonably known of at that time.

   5.5. And/or that the interests of the justice required a review.

   Whilst there is no longer any specific requirement for an application for reconsideration to show one of those grounds, they may still be relevant as grounds to support an application which alleges that the interests of justice require a reconsideration.

6. Rule 70 clearly states that the Judgment will only be reconsidered where it is "necessary in the interests of justice to do so". That does not mean in every case

that where a litigant is unsuccessful, she is automatically entitled to a reconsideration. At all stages of its procedure, the Tribunal must seek to give effect of the Overriding Objective to deal with cases "fairly and justly" as is set out in Rule 2 of the 2013 Rules. Dealing with cases fairly and justly includes:-

6.1. Ensuring that the parties are on an equal footing.

6.2. Dealing with cases in ways which are proportionate to the complexity and importance with the issues.

6.3. Avoiding unnecessary formality and seeking flexibility in the proceedings.

6.4. Avoiding delay so far as compatible with proper consideration of the issues.

6.5. Saving expense.

The Tribunal must also be guided at all times by the common law principles of natural justice and fairness. Accordingly, the wording "necessary interests of justice" in Rule 70 permits employment tribunals to exercise a broad discretion to determine whether reconsideration of a Judgment is appropriate in the circumstances. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking a reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, as far as possible, be finality of litigation". **(Outasight VB Ltd v Brown [2015] ICR D 11 – EAT).**

7. Of the 5 grounds which were necessary under the earlier rules, the claimant does not allege that the Tribunal's decision was wrongly made as a result of any administrative error, that she did not receive notice of the hearing or that the decision was made in her absence. She does not allege that new evidence has become available since the conclusion of the hearing, the existence of which could not have been reasonably known of or foreseen at that time. The only grounds of the claimant's application are those set out in paragraph 2 above.

8. In its Judgment, the Tribunal set out at paragraphs 10 and 11, the chronology of the alleged acts of discrimination and the progress of the claimant's grievances about those matters. As the Tribunal records at paragraph 11, "on examining that chronology, it is abundantly clear that those allegations in the present proceedings which relate to 15 and 16 February 2022 took place prior to the issue of the first set of proceedings. It is accepted by the claimant that she was aware of those incidents at the time she commenced the first set of proceedings, and that she remained aware of them throughout the case management of those proceedings and up to and including the final hearing in January 2023. It is accepted by the claimant that at no stage did she seek to introduce those allegations as acts of unlawful sex discrimination at any time throughout the first proceeding."

The claimant challenges the final part of that particular finding, maintaining that she had always wanted and intended to include the allegations relating to 15 and 16 February 2022 in the first set of proceedings. The claimant adamantly maintained that she was prevented from doing so because the various professional advisors whom she had consulted, insisted that she had no reasonable prospect of succeeding with those claims before the Employment Tribunal. The advice given to the claimant came from various sources, including the Citizens Advice Bureau, her own trade union and more than one firm of

solicitors. The fact remains that the claimant did not include those allegations at any stage in the first set of proceedings. As is set out in paragraph 16 of the Judgment (dealing with the claimant's witness statement in response to the strike out application), the claimant acknowledges that she had raised these issues with her professional advisors and had been consistently advised that they could not form the basis of a potentially successful complaint of unlawful sex discrimination before the Employment Tribunal. The claimant now appears to conflate her failure to include those claims in the first set of proceedings with her personal desire to do so. The Tribunal found in its judgment that the claimant could and should have included those allegations in the first set of proceedings, but did not do so. As a result, the claims in the current proceedings fell foul of the res judicata principles and those in **Henderson v Henderson.**

9. In her lengthy application for a reconsideration, the claimant repeats those grounds which were put before the Employment Tribunal at the hearing on 3 and 4 June 2024. There is no new evidence which has become available since that hearing and which was not available at the time.

10. The claimant in her grounds of application for reconsideration states, "I believe that the evidence given on the day was one sided in favour of the respondent". The fact of the matter is that only the claimant gave evidence at that hearing. No evidence was given on behalf of the respondent. Once the strike out application was made by Mr Williams on the morning of 3 June, the claimant was given the opportunity to prepare and submit a witness statement containing all the evidence which she wished to give to the Tribunal about the reasons why she had failed to include the allegations in the first set of proceedings. That witness statement was prepared with the assistance of the claimant's solicitors and her counsel. Mr Williams asked very few questions by way of cross-examination. The contents of the claimant's statement were not challenged and therefore were in the main accepted. Similarly, the Employment Tribunal had no questions of the claimant, because the information contained in the statement was sufficient to enable the Employment Tribunal to reach a judgment on the strike-out application.

11. The claimant alleges in her application that, "I tried to provide important information to the panel when counsel was struggling to provide the correct answer and Judge Johnson prevented me from speaking, shouting at me in an aggressive manner to "get your hand down"".

12. Employment Judge Johnson recalls the incident. The Tribunal Judge was engaged in discussions with Mr Williams and Mr Gittens, when the claimant raised her hand and began waving it about. The claimant was told not to wave her hand about but to attract her counsel's attention if there was a matter she wished to raise. What the claimant does not state in this part of her application for reconsideration, is what was the "important information" which she then wished to impart to the Tribunal, but which was not imparted to the Tribunal.

13. The claimant goes on to allege, "I had a poor representation from counsel, and I believe I was hung out to dry". The claimant fails to provide any detail as to what her counsel did that he should not have done, or what he did not do that he ought to have done. Mr Gittens rightly conceded, as was his duty as counsel, that Mr Williams' submissions on the legal principles of res judicata and **Henderson v Henderson** were accurate and fairly set out in his skeleton argument. Again, Ms Wilkinson does not now allege that any part of Mr Williams' description of the

law was in any way inaccurate or unjust. The claimant criticises Mr Gittens' failure to ask her further questions when she tendered under oath the evidence contained in her witness statement. The claimant does not set out which questions Mr Gittens ought to have asked and what difference her answers may have made to the outcome.

14. The claimant raises what she describes as "errors within the information of the panel are presented in the Judgment". What the claimant does not do, is describe how the correction of any of those "errors" would make any difference to the Tribunal's Judgment. The minutia of some of the findings of any employment tribunal may always be subject to criticism, but if they are to form part of a successful application for a reconsideration of the Judgment, then it is important to identify what, if any, impact those findings had on the outcome.

15. As is set out in paragraph 28(1) of the Judgment, the Tribunal was satisfied that it was "clear beyond conjecture that the claimant could have included in the first proceedings, the complaints which she now raises in the current proceedings. They could have been included in the first claim form and could have been the subject matter of an application to amend the claim at any stage up to the final hearing in January 2023."

16. As is set out in paragraph 28(3), "the Tribunal was satisfied that the claimant should have included those allegations in the first set of proceedings. Again, the Tribunal was not persuaded by the arguments put forward on the claimant's behalf by Mr Gittens. The claimant's position seems to be that whenever she raised the possibility of those claims being introduced, she was advised that she could not do so. It is not for this Tribunal to comment upon the sufficiency or adequacy of that advice, but if that advice was either negligent, inadvertent or accidental, it is still caught by the decision in **Henderson v Henderson.** The Tribunal was satisfied that the claimant could and should have brought those claims in the first set of proceedings."

17. Having considered all of the grounds set out in the claimant's application for a reconsideration, the Tribunal is satisfied that it is not in the interests of justice for there to be a reconsideration. The application for reconsideration is refused.

**Employment Judge Johnson**

Date: 14 August 2024