



EMPLOYMENT TRIBUNALS

Claimant: Miss A Garvey

Respondent: The Christie NHS Foundation Trust

JUDGMENT- RECONSIDERATION

The claimant's application dated 21 December 2023 for reconsideration of the judgment sent to the parties on 8 December 2023 ("Judgment") is refused.

REASONS

1. I have undertaken preliminary consideration of the respondent's application for reconsideration of the Judgment.
2. The grounds for the application are in 4 emails from the claimant; 3 dated 21 December 2023 and 1 dated 22 December 2023. Attached to these emails are various documents – mainly extracts from correspondence some of which is heavily redacted. Attached to the first email sent on 21 December 2023, is a letter headed "*Re; Request to ask the Employment Tribunal to Reconsider*" (The Letter).
3. It is the Letter that sets out the majority of points made in support of the reconsideration application.

The Law

4. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
5. Rule 72(1) of the 2013 Rules of Procedure empowers an Employment Judge to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The application is for reconsideration of the decision to dismiss the claim for non-compliance with an Unless Order. That decision was made at the beginning of the final hearing listed for 10 days commencing 4 December 2023.

8. The decision was made by the full panel assigned to the final hearing. We considered whether there had been material compliance with the Unless Order and decided that there had not. We then reached a decision on the claimant's application for relief from sanctions – not to dismiss her claim for non-compliance with the Unless Order.

9. The fact that we were to consider these points at the start of the final hearing, was made clear in correspondence from the Tribunal to the parties dated 29 November 2023.

10. I have considered the Letter together with the other content of the 4 emails provided by the claimant.

Document disclosure.

11. Many of the points made by the claimant in these emails relate to disclosure of documents. The claimant attempts to show that she was compliant with relevant orders and the respondent's solicitors were not. We note the contrast between the assertions the claimant makes in support of her reconsideration application and the comments and decision of the Employment Judge at the case management hearings on 6 and 13 October 2023 and on 22 November 2023. They also contrast with the views we reached in December 2023. At the hearing in December 2023, the panel considered carefully and thoroughly the evidence provided in relation to compliance with previous orders.

12. Points raised about documentation are of no great significance to the non-compliance with the terms of the Unless Order although are points that we considered when deciding whether to allow the claim to continue even though there had been non-compliance with the Unless Order (see for example paragraph 84.c of the Judgment). The points raised by the claimant are another attempt by her to put forward a position that was rejected at case management stage and by the full panel at the final hearing in December. They are points that have (or could have) been made previously. Finality requires that points cannot be argued over and over in litigation.

Steps to avoid the hearing.

13. The claimant complains that the respondent was unwilling to resolve the dispute and thus avoiding the tribunal hearing, including deciding not to proceed with an ADR appointment. The claimant should note that the practice is to hold ADR appointments once evidence has been exchanged (see paragraph 43 of the Presidential Guidance on Alternative Dispute Resolution). That position was not reached in this case. But in any event such points are not relevant to our judgment and do not assist the application for reconsideration of that judgment

Witness statements.

14. At page 4 of the Letter (under point 29) the claimant asserts that she had provided 4 of the witness statements in March 2023 *“as part of her document.”*

15. The terms of the claimant's email of 22 December 2023 state "*On receiving the witness statements from the respondent's solicitor on 28 November and reading TKs, immediately sent them the transcript provided as part of my evidence and given to the respondent in March.*"

16. As made clear in the judgment (particularly paragraph 23 a to c.) we found that the claimant had provided a list of documents in March 2023 but not the documents themselves. In her reconsideration application, the claimant does not state which witness statements were disclosed in March 2023. They may well have been statements sent by the claimant anyway on 27 November 2023.

17. The claimant's point may be that she provided documents to the respondent (her employer) as part of an internal process she was going through in March 2023. She did not provide documents to the respondent's solicitors and did not in any adequate way, respond to their requests for copy documents. Having reviewed again the correspondence between the parties in and from March 2023, there was nothing in there from the claimant to indicate that she had provided witness statements.

18. Turning next to the points made by the claimant in relation to her own statement. The points made on reconsideration are:-

- a. That the statement provided on the eve of the final hearing is the same document as was saved earlier on an Apple Mac computer, except that tables were taken out of the statement.
- b. That her health at the time meant that she was struggling to do some tasks correctly. She has provided a statement for fitness to work (fit note) – which her doctor states that she is unfit to work for the period covering the period.
- c. The point made by the claimant under point 70 of the Letter, that "*the statement by Diane was sent and is included within the evidence that supports this plea and the witness statement created on the Apple Mac which should have been sent on 27 November and supports the meta data sent by the claimant on 5 December 2023.*"

19. Dealing first with c. above: This deals with 2 issues – the claimant's statement and a statement from Diane Byrne. Amongst the attachments to the email of 21 December 2023 is an email from the claimant to Hill Dickinson dated 28 November 2023 and timed at 18:18. I note this email was with the Tribunal at the hearing in December 2023. It is found in the supplementary bundle provided by the respondent's solicitors at pages 181-182. The claimant's email attaches an email from 22 September 2022 between the claimant and Diane Byrne. I now understand this to be Diane Byrne's statement. That means that the Tribunal's conclusion at paragraph 76 of the Judgment (relating to DB's statement) is wrong. Whilst this statement was disclosed more than 24 hours after the deadline imposed by the Unless Order, it had been disclosed. Whilst that amounts to material non-compliance with the Unless Order, had that been the only transgression, it is very likely that the claimant's application for relief from sanctions would have been granted.

20. The email dated 28 November 2023 does not however assist in addressing our concerns and conclusions about the claimant's own witness statement.

21. The statement of fitness to work (referred to at 18.b above) confirms what the claimant told us at the hearing when she was provided with an opportunity to give evidence about the witness statement and was evidence that the Panel considered when reaching its decision. Further, the fit note states that the claimant is unable to attend work. There was no application to postpone the hearing on the basis of the claimant's health and/or to delay the dates by which case management steps had to be taken.

22. Dealing with a above: the claimant says that the version of the statement sent with her reconsideration application is identical to the one provided to the respondent and the Tribunal at the beginning of the final hearing, except for the tables at the end of the statement. That is not quite right – the first section of the version of the statement provided at the final hearing has paragraphs 1.1 to 1.14; the version provided with the reconsideration application has paragraphs 1.1 to 1.11. Other than a date typed at the top of the statement – 27 November 2023- the clamant has not disclosed information that indicates when the document was created on the Apple Mac or transferred to the ASUS computer – in support of the evidence she provided at the hearing.

23. Having considered the points raised and evidence provided; there is no reasonable prospect of the decisions made by the panel relating to the claimant's witness statement, being varied.

Conclusion

24. Whilst the clamant has demonstrated that an email between her and DB dated 22 September 2022, was provided (and that is DB's witness statement); having considered the information provided about the claimant's statement particularly, I am satisfied that there is no reasonable prospect of the decision that there had been not been material compliance with the Unless Order, being revoked.

25. I have considered (1) the further information provided by the claimant to support her version of events about her witness statement; and (2) further information relating to compliance with case management orders. Having done so. I have decided that there is no reasonable prospect of the decision to refuse to set aside the dismissal of the claim (relief from sanctions) being revoked.

26. The application for reconsideration is refused.

Employment Judge Leach
DATE: 1 November 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
5 November 2024

FOR THE TRIBUNAL OFFICE