EMPLOYMENT TRIBUNALS

Claimant: Mrs T Munim

Respondent: Boots Management Services Limited

JUDGMENT

The claimant's application dated **23 October 2024** for reconsideration of the judgment in respect of which written reasons were sent to the parties on **9 October 2024** is refused.

REASONS

1. The Claimant brought claims of direct race discrimination, direct religion or belief discrimination, direct age discrimination, direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, and unfair dismissal. A final hearing took place on 13, 14, 15, 16 and 17 May 2024. For the reasons we gave orally at the conclusion of that hearing, all of the claims were dismissed.

2. The Claimant requested written reasons. These were provided to the parties on 9 October 2024. The Claimant now applies for a reconsideration of the Tribunal's decision, as set out in those written reasons. The grounds are set out in the Claimant's application of 23 October 2024.

3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

4. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

5. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.

6. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P (as she was then) in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

> "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.
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> 35. Where […] 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."

7. The Claimant's application was received within the relevant time limit. I therefore consider it under Rule 72.

8. The Claimant's grounds for seeking reconsideration run to some 43 pages. The headline point within the Claimant's application is an allegation that the Respondent falsified evidence submitted to the Tribunal. This is a reference to an email from Ms Gordon to the Claimant. The Claimant notes that two different versions of what is apparently the same email appear in the bundle. The first appears at [165]. It appears to have been sent on 3 November 2020 at 08:13. The Claimant replied to that email on 6 November 2020.

9. The second appears at [169]. On that page the email appears to have been sent on 2 November 2020 at 20:13. That copy of the email was forwarded by Ms Gordon to Gemma Nelson on 5 March 2021. The formatting of the email was different, and the second version contained two points not contained in the earlier version:

a. After saying “I explained that only myself will see the summary of the recommendation from Colleague Health”, which was in both versions, the second version went on to say “only if you give authorisation for me to receive the report”.

b. It then said this:

> “In the meantime, we will continue to put you through as unpaid, until we have a clear understanding and recommendations from Colleague Health. I also emphasised to you that we cannot submit you as unpaid indefinitely, we need to come to some agreement to aid/support your return to work.
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> As I said on the phone, that I am here to support you in the best way possible and any options available to you through the Company’s point of view.”

10. In her witness statement, Ms Gordon cross-referenced the second, lengthier, version of the email.

11. The obvious inference of the apparent discrepancy between the emails is that Ms Gordon amended the email prior to forwarding it Ms Nelson. There are three things to say about the discrepancy:

a. Firstly, the two emails in question were in the bundle. The Claimant had had the bundle for some months prior to the hearing. She did not raise the apparent discrepancy during the hearing. Therefore the Respondent, and more particularly Ms Gordon, have not had the opportunity to answer the allegation. It may be that there is an entirely innocent explanation for the discrepancy. There is no real explanation for why the point was not raised during the hearing, beyond that the Claimant had not previously noticed it.

b. Secondly, and more importantly, there was no specific allegation within the proceedings regarding what was said in that email. The main discrepancy in the email goes to what the Claimant was told about a period of unpaid leave. That was relevant as part of the background to the allegation that the Claimant was told that she should resign (dealt with in paragraphs 179 – 184 of the Judgment). More tangentially, it was relevant to the allegation that the Respondent took disciplinary action against the Claimant inappropriately (dealt with in paragraphs 237 – 242 of the Judgment), and the background circumstances leading to the Claimant’s dismissal. The point in issue was whether the Claimant had been told in or around October 2020 that she could only have 12 weeks of unpaid leave. Ms Gordon’s evidence was that she had told the Claimant that her unpaid leave would last for 12 weeks. The Tribunal did not accept Ms Gordon’s evidence in that regard. The Tribunal found instead that the Claimant had been told that her unpaid leave would last until the Occupational Health advice had been received and considered (that is, that it was open-ended). This is set out in paragraph 43 of the Judgment. So insofar as the email was relevant

to a point in dispute, the Tribunal resolved that specific point broadly in the Claimant's favour in any event.

c. Looking at the Judgment as a whole, the only point where the Tribunal accepted Ms Gordon's evidence in circumstances where it was not supported by contemporaneous documents was regarding the allegation that she regularly scrutinised the Claimant on CCTV. The Claimant had no evidence to support that allegation (beyond a second hand report from an unnamed colleague). In the circumstances, even if the Tribunal had found Ms Gordon to be an entirely unreliable witness, there is no real prospect that it would have changed the outcome in respect of any of the allegations. That is because there would still have been no evidential basis for the CCTV allegation (as indeed the Claimant herself appeared to accept during her own evidence).

12. In the circumstances, therefore, there is no realistic prospect of the Judgment being varied or revoked based on the email discrepancy.

13. The remainder of the application consists of the Claimant highlighting the factual findings within the Tribunal's Judgment with which she disagrees. The Claimant appears to misunderstand or misrepresent numerous aspects of the Judgment. At times, she appears to conflate quotations from documents with the Tribunal's own conclusions.

14. The Claimant refers at times to documents within the bundle which she says support her application, but which when reviewed do not do so. By way of example, the Claimant takes issue with the Tribunal's finding at paragraph 30 that Ms Gordon did not suggest resignation during the conversation on 7 October 2020. She refers in support to 17 separate pages within the bundle, none of which appear to contain a contemporaneous record or allegation that Ms Gordon suggested resignation specifically during the conversation on 7 October 2020.

15. The Claimant additionally seeks at various points to introduce new evidence. There is no explanation regarding why such evidence was not adduced in the Claimant's statement. By way of example:

a. She suggests that the person who told that Ms Gordon watched her on CCTV was Riaz Huq, Team Manager. That is not something she said in her evidence; nor was it recorded in EJ Fowell's Case Management Order (which merely says that Ms Gordon would watch the CCTV footage and discuss what she saw with Mr Huq, not that it was Mr Huq who told the Claimant about it). The Tribunal's findings on the point are dealt with in paragraph 22 of the Judgment.
b. She suggests that an employee who worked less than 15 hours per week was allowed to join the pharmacy adviser programme. Again, this was not in the Claimant's evidence. The Tribunal's findings on the point are dealt with in paragraph 23 of the Judgement.

16. It would be wholly disproportionate to respond to each of the points the Claimant raises on a point-by-point basis. She is, of course, entitled to disagree with the Tribunal's findings. But they are the findings reached by

the Tribunal following a proper consideration of the evidence. The points raise in the application do not, individually or cumulatively, raise any realistic prospect of the Judgment being varied or revoked. And allowing the Claimant to (effectively) reargue the case would be contrary to the important principle of finality in litigation.

17. The application for reconsideration is therefore refused.

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Employment Judge Leith
Date 29 November 2024