



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondents

Dr Suad Abdi-Rahman Hirsi-Farah

V

**Birmingham Women's and
Children's NHS Foundation Trust**

DECISION

In exercise of my powers contained in Rule 72 Employment Tribunals Rules of Procedure 2013 I refuse the claimant's application for reconsideration on the grounds that there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The parties were sent the judgment and reasons detailing the outcome of the consideration of the preliminary Issue which determined that:
 - a. The claimant's complaints of direct discrimination because of race in breach of s13 of the Equality Act 2010 which occurred on or before 23 September 2020 [issues 2.2.1, 2.2.2, 2.2.3, 2.2.6 and 2.2.9] are not presented in the time required by s123 of the Equality Act 2010 and, it not being just and equitable to extend time, the tribunal does not have jurisdiction to entertain them.
 - b. The claimant's timely complaints of unlawful direct discrimination in breach of section 13 of the Equality Act 2010 are not well founded and are dismissed.
 - c. The claimant's complaints of unlawful deduction from pay contrary to section 13 of the Employment Rights Act 1996 and in Breach of Contract are not well founded and are dismissed.

2. On 29 February 2024 the claimant submitted an application to reconsider that judgment and written reasons the decision. Regrettably Employment Judge Dean since drafting her initial reply to the claimant application has suffered poor health and has only recently commenced a phased returned to work and the dispatch of the reconsideration was overlooked.
3. The application to reconsider as articulated in the claimant's email of 29 February 2024 was based on the claimant's request that the judgment should be reconsidered on the basis that it is necessary in the interests of justice to do so. The substance of the claimant's application sets out the reasons why the Tribunal should reconsider the Judgment and reasons sent to her and it is that reconsideration request that is considered in this Decision.
4. The power to reconsider a judgment is contained in Rule 70 to 73 Employment Tribunals Rules of Procedure 2013. The Rules enable a tribunal to reconsider a judgment where it is necessary in the interests of justice to do so. Rule 72 provides that an Employment Judge shall initially consider the application. If the Judge considers that there is no reasonable prospect of the decision being varied or revoked the Judge shall refuse the application.
5. I have applied Rule 72. The claimant in her email of 29 February 2024 set out the grounds on which she purports to rely on Rule 70, namely that it is necessary in the interests of justice and in reality the claimant is challenging the conclusions reached. The claimant in essence bases her request on her disagreeing with the findings of fact that led the panel to its conclusions on the issues to be determined. In making my initial consideration of the application I consider each of the paragraphs of the claimant application:
 - a. **Time Limits and Just and Equitable Consideration.** The claimant acknowledges that certain of her complaints were presented out of time however suggests in her application that the circumstances surrounding the COVID-19 pandemic may have affected her ability to timely present certain complaints. In the panel's findings it was determined that the claimant at the hearing presented no evidence to ground her application on that basis that it was just and equitable to grant an extension of time.
 - b. **Direct Race Discrimination:** The claimant asserts in her application that the tribunal concluded that the claimant failed to establish less favourable treatment due to her race. The claimant asserts that the evidence of direct discrimination is often elusive and difficult to obtain. In the panels decision that argument was acknowledged but other than the bare fact of the claimant status of her race there was

nothing before the tribunal to invite the inference of direct discrimination. The claimant did not present a claim nor argue at the hearing that she was subject to unlawful indirect discrimination because of her race. On the contrary the tribunal made clear findings of fact as to the reason why the claimant was treated in the way that she was that were unrelated to her race. It is to be remembered that the decision at the Final Hearing was reached the panel having considered all of the evidence before us.

- c. **Specific Complaints Revisited:** The claimant seeks to reiterate the reasons why the claimant should have made different findings of fact in respect of the both the extension of time and direct discrimination. For the reasons set out above there is nothing to lead me on my initial consideration of the application to consider there that there is a reasonable prospect of the decision being varied or revoked and I refuse the application.
 - d. **Unlawful Deduction from Wages/Breach of Contract:** Contrary to the claimant suggestion that the tribunal should thoroughly review the evidence on the issue to ensure compliance with the contractual and statutory rights the findings of fact clearly states tha the panel made clear findings of fact in relation to the terms of the claimants contract and were satisfied that the respondent was not in breach of contract and did not make unlawful deduction from the claimant's wages.
6. The claimant raises concerns about procedural fairness and consistency in the Tribunal's approach in relation to time. The claimant asserts that in respect of early case management of her complaint the respondent benefited from extensions and leniency and in contrast, the claimant's complaints against the respondent and her application for an extension of time the claimant subject to stringent time limits and procedural hurdles The claimant suggests such disparate treatment undermines the integrity of the Tribunal's decision-making process and calls into question the fairness of its rulings. The issues to determine whether it was just and equitable to extend time for the panel to have jurisdiction to consider out of time complaints was considered by the panel based upon the findings of fact determined on the evidence before it.
7. Finally, the claimant asserts that for the reasons she outlines the tribunal should provide a reconsideration to uphold the principles of fairness and equitable treatment under the law. Based on the findings of fact within the reasons given for their determination the panel has clearly sought to consider the complaints having full regard to the legal framework and in

particular the statutory burden of proof and the authorities detailed in the reasons.

8. The claimant in real terms seeks to challenge the conclusions reached on the arguments before the tribunal in light of the findings of fact for which in reality the appropriate avenue is by way of appeal.
9. The interests of justice require finality between the parties subject to any appeal and the reconsideration provisions do not entitle a disaffected party to reopen issues which have already been determined, in the findings of fact that have been reached on the evidence and argument before it. There is nothing in the arguments advanced by the claimant which could lead the tribunal to vary or revoke its decision.

Employment Judge Dean
9 December 2024