Case No: 2404789/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms A Byczko

Respondent: Manchester University NHS Foundation Trust

JUDGMENT

The claimant's application dated 9 December 2024 for reconsideration of the judgment sent to the parties on 25 November 2024 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in an 11-page document attached to an email dated 9 December 2024.

The Law

2. 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).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:
    a. **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"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 by 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."**

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. I have carefully read the claimant's application letter. There is nothing in the many points raised by the claimant which gives me grounds to reconsider the decision to strike out the claim. I will address some of the specific points below.

Stifling effect on whistleblowing

8. In several places, Ms Byczko puts forward arguments that the claim should not be struck out because this would prevent serious allegations she is making from being investigated, and would encourage the respondent in its (alleged) practice of bullying and silencing whistleblowers.

9. It is worth emphasising that it is not the role the Employment Tribunal to investigate the underlying 'wrongdoing' behind whistleblowing allegations. If this is what Ms Byczko was seeking from this litigation, then she would inevitably be disappointed, even if the case was to run its full course.

10. Protection of employees who have made protected disclosures *is* an important part of the what the Tribunal does. That is one reason why Tribunals are very slow to strike out claims, and look to utilise any other less severe option before doing so. That is what I have done in this case. Having read Ms Byczko's letter, I still see no realistic alternative to strike out.

Claimant's health

11. Ms Byczko has given me more information about her health and supplied some further medical evidence in the form of two photographs of blood pressure monitor readings and a letter from a locum consultant at the Cardiology Outpatient Department at Stepping Hill hospital. Those documents evidence that Ms Byczko has suffered worry episodes of hypotension (low blood pressure) which have caused repeated fainting

episodes.

12. Ms Byczko also has other health conditions, including mental health conditions, as referred to in that letter and in the report from her psychiatrist in Poland which was before me in the public preliminary hearing. In her letter the claimant gives a further account of her physical health problems.

13. I appreciate that her hypotension and other problems are serious, and will have caused Ms Byczko distress and distraction during the period in which I have found that she unreasonably failed to comply with Employment Judge Ross's orders. However, Employment Judge Ross made allowance for Ms Byczko's health concerns in giving her very long periods of time, and multiple chances, to supply the information required. Ms Byczko has been able to produce long and detailed documents for the Tribunal proceedings, understandably taking time to do so. The difficulty is that these documents have not provided the information that Employment Judge Ross required.

14. Fundamentally, the reasons why Ms Byczko has failed to comply are rooted in her refusal to acknowledge that her case requires any clarification and refusal to engage with the Tribunal process and accept the assistance offered to her. It is not simply, as Ms Byczko persists in believing, a mere matter of "formatting". It is about the fact that the claim remains incomprehensible years into the process, and despite the huge amount of judicial resource it has been allocated. It is unrealistic, in my view, to think that Ms Byczko being given more time would have changed this. Further, I had to balance the interests of both parties. If Ms Byczko was not required to clarify her claim at all due to her health difficulties, that would put the respondent in a very difficult, if not impossible, position. That balancing exercise is fully explained in the Judgment.

15. Had the medical evidence which is now presented been available at the time of the original decision, it would have made no difference whatsoever to that original decision, and it does not provide any basis for a reconsideration of that decision now.

Degree of compliance

16. This point sits alongside Ms Byczko's points in relation to her health. Ms Byczko explains that she had tried to comply and that compliance was made difficult by various matters. She asserts that the Tribunal's requirements of her were unreasonable, and that all she is seeking is some flexibility, and for the Tribunal and the respondent to avoid unnecessary formality. These points were all in my consideration when I made the strike out decision. In rehearsing them, the claimant is seeking a "second bite of the cherry". That is not a permissible ground for reconsideration.

Other matters

17. Similarly, the other matters rehearsed in Ms Byczko's letter, including about the history of her employment and the history of the proceedings were all matters which were broadly before me during the strike out application and effectively represent Ms Byczko's attempt to re-argue the application. Some are, in my view, a mischaracterisation of the proceedings and of what the

Tribunal has asked of Ms Byczko. Others, I acknowledge, are valid. However, as explained in the Judgment I was required to conduct a balancing exercise and the points in Ms Byczko's favour were ultimately outweighed by points in the respondent's favour. Again, simply seeking to reargue these points is not a proper use of the reconsideration process.

18. It also seems from the application that Ms Byczko has not taken on board the meaning and effect of the Judgment. For example, towards the top of page 6 of the application Ms Byczko refers to the respondent being two years late in defending the "updated" part of the claim. As I have explained at paragraphs 28 and 54 of the Judgment, there was no "updated" claim for the respondent to respond to, as the Tribunal had not yet given permission to Ms Byczko to amend her claim.

Reasonable adjustments and judicial conduct

19. Ms Byczko complained, both at the strike out hearing and in her reconsideration application, about EJ Ross's conduct of previous preliminary hearings, particularly around making (or not making) adjustments. In para 74 of the Judgment, I advised her of the role of the Judicial Conduct Investigations Office and provided its website. However, there was no appeal against any of EJ 's case management orders and my function was simply to determine whether the claim should be struck out, not to re-open Employment Judge Ross's orders. Although I considered Ms Byczko's comments about reasonable adjustments, for the reasons I gave in the Judgment I could not see any feasible alternative to striking out the claim.

Conclusion

20. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Dunlop
DATE: 18 December 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
24 December 2024

FOR THE TRIBUNAL OFFICE