



EMPLOYMENT TRIBUNALS

Claimant: Mrs. J. Casemore

Respondent: Buckinghamshire County Council

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application dated 2 February 2022, for reconsideration of the Judgment and Reasons dated 2 July 2021 and for an extension of time for the application, is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Background

1. Between 6 and 9 April 2021, I presided over a full merits hearing in relation to the Claimant's complaint of unfair dismissal. On 9 April 2021, I handed down an oral judgment that the Claimant was fairly dismissed by reason of redundancy.

2. Her representative requested written reasons at the hearing. These were drafted accordingly, dated 2 July 2021, and sent to parties on 12 July 2021.
3. On 22 February 2022, the Claimant made an application for reconsideration of the judgment, pursuant to Rules 70-72 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (now Rules 68 – 70) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2024). Three documents were sent to support the application: Decision of the Local Government and Social Care Ombudsman, dated 6 September 2021; Buckinghamshire Council's stage 3 review outcome report dated 19 November 2021; Witness statement of Ms Joanne Marchant, dated 10 February 2022.
4. On 2 March 2022, the Respondent's replied opposing the application, attaching Jody Twycross in support of their position.
5. Unfortunately, neither the application nor response was provided to me at the time. The Claimant's representatives chased the Tribunal on 27 July 2022 and 2 September 2022, which were also not provided to me.
6. On 6 August 2024, the Claimant's representatives chased the Tribunal again, attaching a further document for consideration (along with the original documents). The Respondent's representatives replied to this email the next day. These documents were passed to me in November 2024.
7. Given the length of time that had passed since the reconsideration application was made, I requested that all emails and attachments from 22 February 2022 onwards be re-sent to the Tribunal for my attention. Representatives duly complied, and I received the documents the following month.

Application

8. The application is made on the basis that new evidence has come to light. Namely, three pieces of new evidence:
 - 8.1. Decision of the Local Government and Social Care Ombudsman, dated 6 September 2021;
 - 8.2. Buckinghamshire Council's stage 3 review outcome report dated 19 November 2021;
 - 8.3. Witness statement of Ms Joanne Marchant, dated 10 February 2022
 - 8.4. providence evidence to rebut that of Ms Twycross (a Respondent witness and one of the panel members interviewing and scoring in the redundancy process) regarding her knowledge of the Claimant's disciplinary process.
9. There is no specific reference to the Ombudsman's report in the application.

"Mrs B complained about the actions of the Council in dealing with her complaint about a child protection investigation. The Council and Mrs B

asked the Ombudsman to consider the complaint, as an early referral, after stage two of the procedure had been completed. We do not agree that the early referral criteria have been met. The Council has agreed to hold a stage three review panel and pay Mrs B £150 for the delay in completing stage two.”

10. It is submitted that the stage 3 review panel were *“highly critical of the process which the Respondent adopted in respect of the investigation which formed the backbone of the disciplinary and suspension”,* resulting in £6000 compensation. It is said that a consequence of this is that anyone with knowledge of the disciplinary and suspension *“would have had a tinted perception as the process was not conducted in a fair manner and therefore any information which was given to others would not have necessarily been correct.”*

11. In her statement, Ms Marchant says:

“I had lunch with Jody Twycross in December 2018 and I have a general recollection that she knew June was suspended from work and subject to a disciplinary process as, I would imagine, did other managers in that service.”

12. The Claimant’s position is that this evidence clearly rebuts that of Ms Twycross (a Respondent witness and one of the panel members interviewing and scoring in the redundancy process) regarding her knowledge of the Claimant’s disciplinary proceedings.

13. In particular, it is said that Ms Marchant’s evidence casts doubt on paragraph 88 of my judgment:

“In relation to Ms Twycross having knowledge of the Claimant’s disciplinary issues, aside from passing reference to Jayne Foster having spoken privately to Ms Twycross there appears to be little in this. Ms Twycross does not recall any such conversations, and I have no reason to disbelieve her. Further, the other panel member – who the Claimant agrees had no previous knowledge of her – gave the same scores as Ms Twycross.”

14. It is submitted that Ms Twycross’ evidence that she had no recollection is clearly contrasted with the evidence of Ms Marchant, and now gives reason to disbelieve Ms Twycross contrary to my conclusion above.

15. The application goes on to assert that this aspect of the judgment formed part of the discussion in respect of whether the Respondent’s overall process was fair, one of the interviewing panel, and later a scorer, having prior knowledge of the interlinked disciplinary and suspension meant the process could not be fair.

Extension of time

16. It is accepted by the Claimant that the application is out of date, and an extension is requested pursuant to Rule 5. The only explanation for this is in the covering email to the application, which refers to the evidence coming to light in three stages

after the judgment: September 2021; November 2021; and March 2022. The covering email to the application submits that “*taken together these three limbs of evidence...significantly affect the factual matrix that underpin the Judgement*”.

17. Reliance is placed on paragraph 10 of HHJ Richardson’s judgment in *Gosalakal v University Hospitals of Leicester NHS Trust (UKEAT/0223/18/DA)*. In this case, the reason for reconsideration did not come to light until February 2022, and so in accordance with the overriding objective of fairness and with discretion it would not have been reasonably practicable, on the Claimant’s submission, for this application to have been brought any sooner.

Response

18. The Respondent refers to the principles set out in *Ladd v Marshall* [[1954] 3 All ER 745, [1954] 1 WLR 1489], which establishes that in seeking to introduce new evidence the Claimant must comply with three criteria:

1. that the evidence could not have been obtained with reasonable diligence for use at the tribunal hearing;
2. that it is relevant and would probably have had an important influence on the hearing; and
3. that it is apparently credible.

19. They go on to set out their position in relation to each of the criteria.

20. Reasonable diligence:

20.1. There is no reasonable explanation for the evidence not being adduced within the employment tribunal proceedings, or at a much earlier point after the judgment if reasonable diligence had been applied;

20.2. This is particularly the case with Ms Marchant’s statement – it was the Claimant’s obligation to adduce this, and the Respondent did not impede approaching Ms Marchant (the Claimant does not allege this)

21. Relevance and important influence:

21.1. There is little conviction behind Ms Marchant’s comments, and no supporting evidence;

21.2. At most, the suggestion is that Ms Twycross might have had a fleeting understanding of the Claimant being suspended and subject to a disciplinary process, whereas Ms Twycross would have required detailed knowledge to form the alleged biased view suggested by the Claimant;

21.3. Ms Twycross’ more recent statement refers to her earlier statement, made for the final hearing, which records that she had been told by Ms Tuxford on 14 November 2018 that the Claimant was subject to disciplinary proceedings - Ms Marchant adds nothing to this;

21.4. Even if Ms Marchant's evidence is correct, which is denied, it would not have had an important influence on the hearing;

21.5. As the factual matrix of two new reports relied on both related to a safeguarding issue, Ms Twycross's safeguarding scores are relevant. These were 4/5 (the same as the other interviewer/scorer, who it is not alleged had any prior knowledge), if Ms Twycross was influenced these would be expected to be lower. This is set out in paragraph 89 of the judgment. Paragraph 90 also addresses that that there were several candidates with higher scores than the Claimant - even if she had been scored higher, it is highly unlikely she would have been successful.

22. Credibility:

22.1. Ms Marchant's evidence is not credible;

22.2. Reliance is placed on the submissions in relation to the second criteria;

22.3. The witness statement leads to a speculative position that "*prior knowledge could lead to bias whether conscious or unconscious*", and "*had Ms Twycross not had prior knowledge her scores may have been different*". [Respondent's underlining for emphasis].

Extension of time

23. The Respondent says that the case of *Gosalakkal* is distinguishable from the Claimant's case. In that case, a material report into the failings of the Leicester Royal Infirmary should have been produced by the Respondent for the Employment Tribunal hearing. In contrast, in the Claimant's case, the obligation to adduce the evidence lay with the Claimant.

The Law

24. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). These are now The Employment Tribunals Rules of Procedure 2024. I will refer to both Rule numbers as the application and response were made with reference to the old Rules.

25. Under **Rule 70 (now Rule 68)** of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

26. **Rule 71 (now Rule 69)** provides that an application for reconsideration under Rule 70 must be made in writing (and copied to all other parties) within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

27. The process by which the Tribunal considers an application for reconsideration is set out in **Rule 72 (now Rule 70)**. Rule 72(1) provides that where an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the Tribunal shall inform the parties of the refusal.
28. By virtue of **Rule 5 (now Rule 5(7))**, the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
29. In *Outasight VB Ltd v Brown 2015 ICR D11, EAT*, Her Honour Judge Eady QC accepted that the wording ‘necessary in the interests of justice’ allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *“which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”*.
30. Reconsideration of a judgment may be necessary in the interests of justice if there is new evidence that was not available to the tribunal at the time it made its judgment. The underlying principles to be applied by tribunals in such circumstances are the same as those which apply in civil litigation by virtue of the well-known case of *Ladd v Marshall 1954 3 All ER 745, CA*. There, the Court of Appeal established that, in order to justify the reception of fresh evidence, it is necessary to show:
- that the evidence could not have been obtained with reasonable diligence for use at the original hearing
 - that the evidence is relevant and would probably have had an important influence on the hearing; and
 - that the evidence is apparently credible.
31. The Employment Tribunal will refuse an application for reconsideration on the basis of new evidence unless the new evidence is likely to have an important bearing on the result of the case. In *Wileman v Minilec Engineering Ltd 1988 ICR 318, EAT*, the EAT said that the reason for this requirement is that, unless the new evidence is likely to influence the decision, then *“a great deal of time will be taken up by sending cases back to an [employment] tribunal for no purpose”*.

Conclusions

Extension of time

32. This is a matter of my discretion, with no specific grounds such as those that are required elsewhere, in relation to 'reasonably practicable' or 'just and equitable'. In this instance, there has been a significant delay between the judgment/written reasons and the reconsideration application being made. The reason given is that the new evidence relied on came to light at various points after the judgment/reasons. It is therefore necessary to look at the significance of that evidence to inform the decision on an extension of time. In doing so, addressing the merits of the application is unavoidable. This consideration should not be construed as a granting of the extension of time, it is simply more practical to look at everything holistically.
33. Additionally, the time between written reasons and reconsideration is clearly relevant to the first of the principles in *Ladd*, which considers whether the evidence could not have been obtained with reasonable diligence.

Ombudsman report

34. The summary of the decision states:
- "Mrs B complained about the actions of the Council in dealing with her complaint about a child protection investigation. The Council and Mrs B asked the Ombudsman to consider the complaint, as an early referral, after stage two of the procedure had been completed. We do not agree that the early referral criteria have been met. The Council has agreed to hold a stage three review panel and pay Mrs B £150 for the delay in completing stage two."*
35. This is clearly about the child protection investigation and makes no reference to the employment situation.
36. In any event, the application does not specifically refer to this document – it appears to have been provided solely for background and/or support of the substantive points. Seemingly it also wasn't deemed significant enough to make an application solely on receipt of this in September 2021.
37. On this basis, I will not consider this piece of evidence any further.

Stage 3 review outcome

38. It is asserted on behalf of the Claimant that the stage 3 review panel were critical of the Respondent's investigation. That is correct, in relation to the **child protection investigation**.
39. The report starts by setting out that:
- "The purpose of this Panel is to review the Stage Two investigation and the response of Buckinghamshire Council, and to promote resolution of the*

complaints from their consideration of the submission presented to the Panel by June Casemore.”

40. It goes on to highlight that:

“The Stage Two investigation report was highly critical of the child protection investigation practice in this case. In particular the findings included a failure to consult all key family members at the outset of the investigation, including the male special guardian for the two children. The report clearly shows that the failure of the service to establish the family circumstances with clarity at the outset led to an approach and method that was not justified by the available evidence, as subsequently became clear.”

41. The report says nothing about the **employment investigation**. In fact, it specifically says:

“The Panel Chair explained to Ms Casemore that the Panel were unable to review and comment on the employment issues set out in the submission, because these were and remain subject to employment law, and are entirely a matter for the local authority, subject to any implementation of appeal procedures, through an employment tribunal or other means.”

42. Finally, the report records that *“the Panel determined that the review would consider the compensation issues under three main headings. This would be in accordance with the required Stage Three procedure...a) Backdated SGO Allowance Payments and other financial support due to the special guardians...b) The Delay of the Stage Three Review...c) Compensation for the impact of poor professional practice.”* None of these headings relate to the employment investigation.

43. Whilst it is correct that the child protection investigation is what led to the Claimant’s suspension and investigation, the assessment of the Respondent’s actions in relation to the first cannot automatically be transposed onto the second. It is therefore incorrect to say anyone’s knowledge of the disciplinary and suspension would be tainted because the process wasn’t conducted fairly.

44. As stated above, this report does not deal with the disciplinary process. Even in relation to the child protection investigation, it comments on it being *“seriously flawed”* and *“poorly conducted”* but makes no reference to fairness.

45. In order for the stage 3 outcome to have any bearing on my judgment, I would have needed to have found that the disciplinary process played a part in the Claimant’s dismissal. I did not find this. At paragraph 80 of my judgment I clearly state: *“There is no evidence that the disciplinary process influenced the redundancy process in any way.”*

46. Applying the principles in Ladd:

Reasonable diligence

- 46.1. The review concluded in November 2021, and therefore clearly was not available at the time of the April 2021 Employment Tribunal hearing.

Relevance and important influence

- 46.2. As the review relates to the child protection investigation, and specifically excludes the employment investigation, it is clearly not relevant to the issues that were before me at the original hearing;
- 46.3. As with the Ombudsman's report, it also wasn't deemed significant enough to make an application solely on receipt of this in November 2021. That is an acknowledgment that it would not have important influence on the hearing.

Credibility

- 46.4. Whilst the report itself is credible because of the source, this cannot override its lack of relevance and importance.
47. This document does not meet the criteria for reconsideration in relation to new evidence.

Ms Marchant's statement

48. There is only one substantive paragraph, that is incredibly vague.
49. Applying the principles in Ladd:

Reasonable diligence:

- 49.1. The statement is from February 2022. No reason is given as to why this evidence could not have been obtained before the April 2021 hearing.
- 49.2. Ms Marchant sets out that she worked for the Respondent at that time and continues to do so. There is no suggestion that the Claimant/her representative did not have access to the witness;
- 49.3. Similarly, Ms Marchant does not assert that there was anything preventing her from providing evidence at an earlier stage, or what prompted this late statement;
- 49.4. Had the Claimant/her representatives applied reasonable diligence; they would have been able to obtain Ms Marchant's evidence prior to the original hearing.

Relevance and important influence:

- 49.5. The statement does have some relevance, in that it relates to the Claimant's assertion that Ms Twycross knew of her disciplinary matters which influenced her scoring in the redundancy interview;
- 49.6. In relation to important influence, I have to take this statement as being the witness' strongest evidence and consider that Ms Twycross' statement in response would effectively be her reply in cross-examination on this point. On that basis, I would have placed very little weight on Ms Marchant's evidence.
- 49.7. The statement does not contradict Ms Twycross' original position that she had a general knowledge of the Claimant's suspension and disciplinary.
- 49.8. It adds nothing to my conclusion at paragraph 88, because that was specifically in relation to an assertion that Ms Twycross had engaged in a conversation with Jayne Foster.
- 49.9. The application fails to consider that I also reached clear conclusions at paragraph 89 about the second scorer's marks being aligned with Ms Twycross, and at paragraph 90 about the likely outcome even if the Claimant had scored higher overall. Ms Marchant's statement has no impact on this.
- 49.10. Faced with such vague evidence, I would have reached the same conclusion about Ms Twycross in paragraph 88.

Credibility

- 49.11. I cannot conclude that Ms Marchant's evidence is credible. In part because it is so vague, but additionally because nothing is said about the motivation to provide a statement now.
- 49.12. Ms Twycross' statement in response is credible, because it is consistent with the position in 2021.
50. This document does not meet the criteria for reconsideration in relation to new evidence.

Summary

51. The new evidence does not meet the criteria for new evidence in relation to reconsideration of the original judgment, either individually or combined.
52. There is no reasonable prospect of the decision of April 2021 (confirmed in written reason in July 2021) being varied or revoked. It is therefore not in the interests of justice to allow reconsideration of the original judgment.
53. In any event, the application for an extension of time is refused. There has been a significant delay between receipt of the written reasons and the application being

made, which is not adequately explained by the evidence coming to light at a later date.

54. It is not in line with the overriding objective to extend time in these circumstances.

Approved by:

Employment Judge K Douse

Dated: ...6 March 2025.....

Sent to the parties on: 10 March 2025

For the Tribunal Office