Case No: 2402129/2021

EMPLOYMENT TRIBUNALS

Claimant: Mrs Charlotte Buckby

Respondent: Cumberland Council

JUDGMENT

The claimant's application dated 17 January 2025 for reconsideration of the Judgment sent to the parties on 17 January 2025 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. I have considered the claimant's various emails containing information about her medical condition and the Presidential Guidance on vulnerable parties.

2. I am sorry for the delay in responding to the claimant's application for reconsideration. This was not forwarded to me until the day before yesterday.

The Law

3. 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 68 The Employment Tribunal Procedure Rules 2024.

4. Rule 70(2) empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

5. 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:

> "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."

6. 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."

7. In *Ebury Partners UK Limited v David [2023] EAT 40* the EAT put it this way in paragraph 24:

> "The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed

error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT."

8. In common with all powers under the Procedure Rules, preliminary consideration under rule 70(2) 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. Where a party has raised arguments, or had a reasonable opportunity to raise them, it will not generally be in the interests of justice to grant them a second such opportunity.

The Application

9. The case was listed for 7 days commencing 13 January 2025. The claimant did not attend on day-2, and it was evident that the case could not be concluded at that 7-day session. The respondent made the application to strike out in the claimant's absence. We proceeded, in the claimant's absence, because: (a) we did not know if or when the claimant would attend; and (b) (as explained in paragraphs 25 of the previous Reasons) we had heard all of the arguments and the claimant's response to those arguments prior to the respondent's further renewed application. We made a decision to strike out the claimant's claim under rule 38(1)(e) and written reasons were promulgated on 17 January 2025, the reasons essentially being set out at paragraph 33(a) to (e).

10. Following our determination, the claimant has proffered a number of emails plus inclusions containing additional information:

    a. I do not dispute the content of the claimant's emails on her medical condition. Our concern about the lack of medical corroboration centred on ascertaining precisely what were the medical conditions complained of. The genuineness of the claimant's illnesses has never been in issue for the Tribunal as we did not believe that she had made this up. Our focus was more on trying to understand the various impairments and predict how these would affect the claim and the Employment Tribunal process. It

was not our purpose or intention to punish the claimant for her non-attendance although I accept that the consequences of our decision may be seen by the claimant as having a punitive effect.

b. Whilst we made no determination that the claimant was a vulnerable party, we accepted that she had some needs and we made adjustments accordingly and within the over-riding objective. That was set out in our decision. The guidance on vulnerably was adhered to and the requirements of the Equal Treatment Bench Book were at the forefront of our consideration, as explained to the claimant at the previous hearing and on day-1 of this hearing.

11. The claimant's emails and her additional information/evidence do not really address the key factors in our decision that a fair hearing was no longer possible. This information would not have affected our decision had it been supplied by the claimant before her case was struck out. Accordingly, I consider that there are no reasonable prospects of the original decision being varied or revoked.

12. In addition, I would like to correct my previous Written Reasons in respect to the claimant's health position. I recorded the claimant as having IBS (irritable bowel syndrome); the claimant subsequently informed the Tribunal that she was, in fact, under investigation and/or treatment for IBD (inflammatory bowel disease). I accept that the claimant had (or was likely to have had) IBD instead of IBS. I recorded my understanding at the time and that misunderstanding has now been corrected. I apologise to the claimant for this error in recording her medical condition.

Approved by Employment Judge Tobin
Dated: 14 March 2025
JUDGMENT AND REASONS SENT TO
THE PARTIES ON
25 March 2025

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FOR THE TRIBUNAL OFFICE