EMPLOYMENT TRIBUNALS

Claimant: **Mrs I Umerah**

Respondent: **Dimension (UK) Ltd**

JUDGMENT

The claimant's application dated **13 March 2025** for reconsideration of the judgment sent to the parties on **28 February 2025** is refused.

REASONS

1. The claimant has applied for a reconsideration of the costs judgment sent to the parties on 28 February 2025 under r.68 of the Employment Tribunal Procedural Rules 2024. Having considered the application under r.70(2), the employment judge considers that there is no reasonable prospect of the judgment being varied or revoked on those grounds. The application for a reconsideration is rejected.

2. The procedure for an application for a reconsideration is set out in r.70 Procedural Rules 2024. It is a two stage process. If the employment judge who chaired the tribunal panel which made the judgement considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused under rule 70(2) and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response and seeking the views of the parties on whether the application can be determined without a hearing. That notice may set out the Judge's provisional views on the application. Unless the judge considers that a hearing is not necessary in the interests of justice, if the application is not rejected under rule 70(2), then the original decision shall be reconsidered by the full tribunal who made the original decision.

3. Where a litigant applies for a reconsideration on the grounds that new evidence is available they must persuade the employment tribunal that the evidence could not have been obtained with reasonable diligence for use at the hearing, that the evidence would probably have had an important influence on the outcome of the case and that it is credible (Ladd v Marshall [1954] 1 WLR 1489 CA). As was said in Wileman v Minilec Engineering Ltd

[1988] I.R.L.R. 144 EAT, the evidence must not only be relevant but it must be probable that it would have had an important influence on the case for tribunal hearings are designed to be speedy, informal and decisive. However, it is not necessary that the new evidence should be shown to be likely to be decisive. The question for the tribunal on reconsideration is

> "in the light of what we know about this case, has it been shown to us that the evidence is relevant and probative, and likely to have an important influence on the result of the case?" (paragraph 15 of Wileman v Minilec)

4. The power to reconsider a judgement under rule 70 can only be used if it is necessary to do so in the interests of justice. That is apparent from the wording of the rule itself and, as it was held, by HH Judge Shanks in Ebury Partners UK Limited v Acton Davies [2023] IRLR 486 EAT 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 has been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct to suppose that 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 and it is one of law which is more appropriately corrected by the EAT." (Para 24 of the judgement of HHJ Shanks).

5. In the present case, the claimant first argues there were errors in the facts of the claim. So far as is relevant to the costs issue, this appears to be an argument that costs should not have been ordered against her because she genuinely thought that she was acting in her child's best interests at the time of the altercation which led to her dismissal – and presumably that she brought the claim with genuine intent to seek redress for perceived wrongs. The test of whether there was unreasonable conduct of the litigation is objective and does not depend on whether the claimant genuinely believed in the claim (Vaughan v Lewisham LBC (UKEAT/0533/12) para.14(6)).

6. The argument that the claimant would have realized the weakness of her claim had the respondent applied successfully for a deposit order was one raised at the hearing (see para.74 and 92.f of the judgment).

7. There is no reasonable prospect of the claimant successfully arguing that it was unreasonable conduct of the respondent not to consent to judicial mediation in the circumstances of this case.

8. The claimant appears to argue that, in her case, an adverse costs order has had the effect of depriving her of access to justice in an unrelated case. When making a costs order in the first place the tribunal has to balance the interests of justice to both parties and did so as set out in our judgment in particular at para.92. We were well aware that making a costs order is the

exception rather than the rule; based on the information available, a decision the claimant has made in other litigation does not mean there are reasonable prospects of her succeeding in her application to revoke this costs judgment.

9. The claimant has left her employment since the date of the costs judgment and produces more information about her expected liabilities as a student. The information provide still falls short of full disclosure of the income and expenditure of the household. We took the available information into account in a broad brush way because it was proportionate to do so rather than incur cost and delay of a more granular assessment of disposable income.

10. That the claimant might resign to concentrate on her studies was made known to the tribunal at the hearing. This is not a material change in circumstances. Our assessment of her means was that although her present income might change, the likelihood was that she would continue with her studies and would be likely to have a reasonable wage in the foreseeable future as a nurse. Nothing she has put forward in the reconsideration application has a reasonable prospect of affecting that assessment. In any event, it is highly likely that the tribunal would conclude that the documentation supplied with the application could with reasonable diligence have been available at the costs hearing.

Date: 25 March 2025

Approved by

Employment Judge George

JUDGMENT SENT TO THE PARTIES ON

3 April 2025

FOR THE TRIBUNAL OFFICE