EMPLOYMENT TRIBUNALS

Claimant: **Mr A Malik**

Respondent: **BDO Services Limited**

Heard at: **London Central Employment Tribunal** **On: 3 April 2025**

Before: **Employment Judge H Clark (sitting alone)**

RECONSIDERATION

The Claimant's application for a reconsideration of its judgment dated 26 February 2025 is refused.

REASONS

1. By an email dated 16 March 2025 the claimant asked for a reconsideration of the Tribunal's judgment of 26 February 2025 in which it determined that it did not have jurisdiction to hear the claimant's claims. The Tribunal did not consider it would be just and equitable to extend time to enable the claims to be heard. The judgment and reasons were sent to the parties on 10 March 2025.

2. The claimant's application provided a number of reasons for his application as follows:

2.1 That the respondent did not inform the Tribunal that it utilizes a system called "Workday" to store all employee data. This was a material non-disclosure and has rendered the hearing unfair. In relation to the Workday system, the claimant submitted that "It is reasonable that management were aware of my health struggles as they would inquire and document sick days." The claimant produced evidence of the Workday system, namely a reference to it in an exchange of emails into which the claimant was copied on 25th and 28th June 2021. The claimant alleged that evidence was deliberately hidden from the Tribunal, and that the respondent attempted to conceal key documents and emails that directly supported the claimant's claim. The claimant submits this was a breach of rule 31 of the Tribunal's procedure rules.

2.2 The claimant submitted additional medical evidence to demonstrate that he was still taking a variety of medication from April 2023 onwards and to provide more detail about the course of CBT he undertook in 2023.

2.3 That the claimant had found evidence confirming an "extensive training programme" which began on 02/08/2022 and did not include adjustments for disability. The PowerPoint slides for this training were provided to the Tribunal.

2.4 The claimant made further submissions as to why he had not raised a grievance (he states that UK employment tribunals have allowed claims even when a formal grievance was not raised), he re-iterated that he had requested reasonable adjustments on "multiple occasions" via calls and Teams meetings and that the respondent failed to make reasonable adjustments during his sick leave prior to the end of his employment. He also made further legal submissions about the test which the Tribunal was required to apply in deciding whether to grant an extension of time.

3. By email dated 19 March 2025, the respondent clarified that "Workday" is a data management system used by the respondent to record employee data and absence management information, from which the claimant's absence records (as put before the Tribunal at the hearing) were drawn. It confirmed that meeting notes are not stored on this system. The respondent has done a further search of the Workday system and confirms that there is no additional information or documentation concerning the claimant's health during his employment on the system

The Law

4. The Tribunal has the power to reconsider its Judgments under rule 69 of the Employment Tribunals Procedure Rules 2024 where it is "*necessary in the interests of justice to do so."* Any power under the 2024 Rules should be exercised in accordance with the overriding objective in rule 3.

5. Examples from case law of circumstances where the interests of justice might require a reconsideration are: where relevant evidence subsequently comes to light which was not available at the time of the hearing, where a material error in the procedure at a hearing leads to an injustice, where a party did not have notice of a hearing or where the parties and Tribunal proceed on the basis of a mistaken understanding of the law. The Rules themselves do not define such circumstances (although used to do so), so the Tribunal has a wide discretion, although the "interests of justice" refers to the interests of both parties, not just the disappointed party (*Redding v EMI Leisure Ltd EAT 262/81*).

6. Pursuant to rule 70 of the 2024 Rules, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, there is no need to invite the parties' views as to whether the application can be determined on paper or whether a further hearing is needed.

7. The reconsideration procedure should not be used simply as an opportunity for an unsuccessful litigant to re-argue his or her case. There is a public interest in the finality of litigation, which is not furthered if parties are permitted to make more detailed or different submissions to those which they made at the first hearing, to put their claim on a different basis in light of the Tribunal's findings or

to adduce evidence which was reasonably available to them before the determination was made.

Discussion

8. The chronological background to this case is set out in the Tribunal's written reasons dated 26 February 2025. The matter for the Tribunal's determination was the claimant's application for an extension of time to present his claim. The broad merits or scope of the claimant's substantive claim was not an issue before the Tribunal. As such, the claimant's new allegation that reasonable adjustments to online training should have been made can have no bearing on the Tribunal's decision on the claimant's application for an extension of time.

9. It is not the function of a reconsideration application to provide a second opportunity to a party to provide evidence or make additional submissions which they could and should have put forward prior to the judgment's being made. In some circumstances, it will be in the interests of justice to admit additional evidence where it was evidence or information which was not reasonably available to the party at the time of the hearing and/or had been discovered subsequently. Such evidence needs to be relevant to the issues being determined and likely to materially affect the Tribunal's decision. The submissions and additional evidence provided by the claimant in his reconsideration application all appear to have been available to him at the time of the original hearing.

10. The claimant has made additional submissions as to why he did not raise an internal grievance with the respondent during the currency of his employment. This was an issue which was explored in the hearing and the Tribunal specifically addressed it in its reasons at paragraph 31. It was made clear that it was no criticism of the claimant that he had not brought a grievance and that there are a number of perfectly understandable reasons why employees do not do so. There is certainly no requirement in law that a claimant should lodge an internal grievance in order to pursue a discrimination claim. The only relevance of the absence of a grievance was that it contributed to the lack of documentary evidence. The submissions made in the reconsideration application do not alter that finding.

11. The claimant produced a variety of medical evidence for the purposes of the hearing, which the Tribunal took into account in its reasoning. The claimant seeks to supplement that evidence by explaining the medication he was on from April 2023 and producing documentation concerning his CBT treatment. No reason is offered as to why this evidence was not provided at the hearing, although the Tribunal appreciates that it can be difficult for a litigant in person to know exactly what evidence might be relevant to an issue in a case. With sensitive medical evidence, it is perhaps understandable that a conservative approach might be taken. However, even if the Tribunal were to consider the claimant's additional medical evidence, it would not have a material bearing on the outcome of the claimant's application. The Tribunal acknowledged in its judgment at paragraph 25 that the claimant had on-going health challenges throughout 2023 (and still does). It found, however, that the claimants health was not in the same "relentlessly critical" state it was in late 2022 and took into

account the fact that the claimant had been able to apply for and start a new job (with reasonable adjustments). The additional evidence would not materially change the Tribunal's findings in this respect.

12. The preliminary hearing was arranged at a case management hearing before Employment Judge Walker on 13 November 2024. There was no order for disclosure made, but the parties were required to exchange witness statements and to liaise to agree which documents should be placed in a bundle for the hearing. The claimant has suggested that the respondent's failure to disclose evidence in relation to Workday was a breach of rule 31 of the Tribunal's rules. It is assumed that this was a reference to the 2013 rules, which is now rule 33 of the 2024 rules. It provides that "*The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court or, in Scotland, by a sheriff*." As the Tribunal did not make such an order on 13 November 2024, the respondent cannot be in breach of it.

13. The additional evidence on which the claimant relies concerning the respondent's use of the Workday system was contained in an exchange of emails in June 2021. It was an email from the claimant's "people manager" and concerned the claimant's and another member of staff's 2021 objectives, not the claimant's health. The claimant's manager explained in an email that the claimant and the other member of staff had not appeared in his "Workday", so the manager was referred to HR. The setting of the claimant's objectives in or about June 2021 was not an issue which was relevant to the claimant's application for an extension of time (and pre-dated the time scale of the Tribunal's inquiry), so the Tribunal would not have expected this exchange of emails to have been disclosed for the purposes of the preliminary hearing. In any event, these emails were in the possession of the claimant and, presumably had been since June 2021 as he was copied into them at his personal rather than business email address. Had the claimant considered this correspondence to be relevant to the issues in the preliminary hearing, he could have asked for it to be put into the hearing bundle and the respondent's witness could have been questioned about it.

14. Leaving aside the disclosure aspect of the issue, the Tribunal considers whether, in any event, the identification of the specific data management system used by the respondent to store the claimant's data and his absences might make a material difference to the Tribunal's decision. The respondent did not suggest at the hearing that it had no data at all concerning the claimant, but that his two managers and HR Manager at the time had not retained emails concerning the claimant and had searched their computer systems using the claimant's name and returned no documents. Ms Lloyd explained that there was limited evidence on the claimant's personnel file, but did not suggest there was no data at all. It has been clarified that the documentary evidence provided by the respondent concerning the claimant's absences was drawn from the Workday system, so the claimant's suggestion that the respondent has concealed evidence of his absences and the reasons for it, is not sustainable.

15. The accuracy of the documentary evidence provided by the respondent at the hearing confirming the claimant's absences was confirmed by the claimant's own

oral evidence. The Tribunal specifically asked the claimant whether the respondent's record of his sickness absences was correct. This evidence is recorded in the Tribunal's Reasons and comprised one day's sickness absence on 31 December 2021 and then the absences in August 2022 which pre-dated his resignation. When the claimant submits: "management were aware of my health struggles as they would inquire and document sick days", this can only refer to the one day's absence on late 2021 (an adverse reaction to the Covid vaccine) and the provisional diagnosis of "malaise and likely viral illness" in August 2022. That evidence was before the Tribunal at the hearing on 26 February 2025.

16. The claimant was asked at the hearing whether there was documentary evidence which he had expected to see from the respondent, which had not been produced and, (as set out in the Tribunal's Reasons), he did not know. The fact that records were maintained on a particular named data management system does not make it more likely that there would be documentation retained of a particular kind. In any event, the respondent has confirmed that further documentation concerning the claimant's health does not exist on the Workday system. As such, there is no new evidence available from which the claimant or respondent's witnesses could refresh their memories.

17. As outlined above, the broad points made by the claimant in his reconsideration application were considered by the Tribunal in its decision of 26 February 2025. The claimant's application is seeking to emphasise or expand on the submissions made on his behalf in light of the Tribunal's Reasons. It is an attempt to re-litigate the decision, but with no materially different evidence. In these circumstances, the Tribunal is satisfied that there is no reasonable prospect of the original decision being varied or revoked and the interests of justice do not require the matter to be re-opened.

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Employment Judge Clark

Dated: 3 April 2025

DECISION SENT TO THE PARTIES ON

15 April 2025
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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS