



EMPLOYMENT TRIBUNALS

Claimant:
Juliana Serrao

v

Respondent:
NHS Professionals Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 68 of the Employment Tribunals Rules of Procedure 2024 (“**Rules**”), the claimant’s application of 2 December 2024 for reconsideration of the judgment given orally on 15 November 2024 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. This reconsideration Judgment has been delayed because the claimant’s application was not sent to the Judge until 26 March 2025. I therefore apologise for the delay with the Judgment.
2. The claimant did not succeed in her complaints of detriment for making a protected disclosure, unauthorised deduction for wages and unpaid holiday pay.

Principles of Reconsideration

3. When approaching any application, and during the course of proceedings, the Tribunal must give effect to the overriding objective found at Rule 3 Employment Tribunals Rules of Procedure 2024. This says:

“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

4. The power to confirm, vary or revoke a judgment is found at Rule 68. That provides that a Judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.
5. By rule 68, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
6. Rule 70 (1) and (2) of the Rules provides:

"A Tribunal must consider any application made under rule 69. If the Tribunal considers that there is no reasonable prospect of the Judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused, and the Tribunal shall inform the parties of the refusal. ..."
7. Where an Employment Judge refuses an application following the application of Rule 70 (2), then it is not necessary to hear the application at a hearing.
8. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be guarded against (*Outasight VB Limited v Brown* [2014] UKEAT/0253/14).
9. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board* [1975] ICR936, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also said it was unjust to give the loser in litigation a *"second bite of the cherry"* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points

and bring additional evidence or information which would overcome the reasons given for the loss.

10. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (Ladd v Marshall [1954] EWCA Civ 1):

10.1. the evidence could not have been obtained with reasonable diligence for use at the trial;

10.2. the evidence would probably have an important influence on the result of the case; and

10.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

Unjust Judgment due to the respondent's failure to comply with case management orders. Specifically exchange of bundle and disclosure of documents which were late.

11. The claimant refers to being deprived of having sufficient time to properly review and respond to the evidence from the respondent which impacted the fairness of the hearing.

12. This was not mentioned by the claimant during the final hearing.

13. An earlier case management order required the respondent to provide disclosure of documents by 19 July 2024 and the claimant states she received disclosure of documents by 22 July 2024.

14. The case management order required the claimant to be provided with a copy of the bundle by 9 October 2024. The claimant states she was sent this on 11 October 2024 without page numbers. The bundle index was also late, but the application does not stipulate when this was received by.

15. First of all, the Tribunal did not receive the bundle until after 10 am on the first day of the hearing. The hearing started late in those circumstances to allow for reading time. The claimant will also have had this additional reading time if it was necessary. However, no issues were raised by the claimant about not having sufficient time to prepare for the final hearing. Nor does the application specify which evidence was late and resulted in any unfairness. No application was made in relation to any noncompliance with case management orders.

16. In any event (even if such an application had been made) it is evident that the claimant had the main hearing bundle more than a month before the final hearing and the disclosure of documents was made almost 4 months ahead of the final

hearing. She had prepared her witness statement accordingly. It is therefore difficult to understand how the delay (such as it was) prejudiced the claimant's ability to present her case effectively. The claimant certainly was able to cross examine the respondent's witness on relevant issues. When she strayed from the relevant issues she was informed to come back to the issues in her case. She did not appear confused or unfamiliar with any documents referred to in the bundle. She had prepared a witness statement and was able to cross examine the respondent's witness on their evidence.

17. There is no new evidence the claimant now advances which supports her application for reconsideration. We observed nothing during the course of the hearing which could be considered to have impeded the claimant's ability to present her case. Nothing was raised during the hearing by the claimant which we considered was preventing her from having a fair hearing. She knew of the complaints and issues. She had sufficient time to give her own evidence and to ask relevant questions of the respondent's witness.

Decision on the reconsideration application

18. In my judgment, the claimant is now seeking to have a second bite of the cherry. She raises nothing new in relation to her claims which could not have been raised at the final hearing. Indeed, there is nothing within her application which evidences how the slight delays in compliance with case management orders impacted her ability to have a fair hearing. Her application makes a general assertion relating to noncompliance with case management orders. There is no evidence that disclosure was for example incomplete and/or further evidence has come to light which impacts the decision. She appeared well prepared notwithstanding she did not have legal representation.
19. Further it is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, especially where evidence being referred to has already been considered and deliberated on. It is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the respondent is able to make to the Employment Appeal Tribunal.
20. In view of the above determination of this application, the original judgment still stands.
21. The application for reconsideration is refused.

Case Number: 2306414/2023

Employment Judge N Wilson
Dated: 22 April 2025