



EMPLOYMENT TRIBUNALS

Claimant

Mrs G Oladoke

Respondent

South West Yorkshire Partnership
NHS Foundation Trust

Heard at: Leeds Employment Tribunal **On: 22 April 2025**
In chambers

Before: Employment Judge Davies

JUDGMENT

1. Pursuant to Employment Tribunal Rule 68 the Tribunal's costs judgment dated 20 September 2024 is revoked.

REASONS

Introduction and procedural background

1. This was the hearing of the Claimant's application for reconsideration of the Tribunal's costs judgment.
2. In accordance with prior case management decisions, the hearing was dealt with on the papers by Employment Judge Davies sitting alone. I took into account the written representations provided by both parties and the evidence provided by the Claimant.
3. As noted in the costs judgment, the costs application was determined in chambers by the Tribunal on the papers, in the following circumstances:
 - 3.1 The Claimant was legally represented throughout these proceedings until 18 November 2024.
 - 3.2 The Tribunal heard the Claimant's claims of race discrimination at a hearing on 28, 29 and 30 November 2023. Oral judgment dismissing all the claims was given at the conclusion of the hearing and a written judgment was sent to the parties on 5 December 2023.
 - 3.3 The Respondent made an application for costs on 28 December 2023.
 - 3.4 The Claimant requested written reasons for the judgment, and they were provided on 24 January 2024.
 - 3.5 There was some delay in referring the costs application to the Judge. On 6 February 2024 when that was done the Tribunal wrote to the parties, requiring the Respondent to send to the Claimant and the Tribunal a PDF file containing all the documents it relied on in its costs application

- by 19 February 2024. The Claimant was then ordered to send to the Tribunal and the Respondent by 4 March 2024 a PDF file containing her written response to the costs application and any evidence she relied on in responding to it, including evidence of her ability to pay a costs order if made. The parties were told that a costs hearing would be listed.
- 3.6 On 14 March 2024 the parties were told that a costs hearing had been listed for 4 July 2024. The Respondent promptly applied for a postponement, on the basis that it was not available on that date.
- 3.7 The Respondent provided a PDF file as ordered but the Claimant did not provide any file or any response to the costs application. The Tribunal therefore wrote to her on 27 March 2024 requiring her to comply with the order to provide a response. The Claimant again did not respond at all.
- 3.8 On 17 May 2024 the Respondent wrote to the Tribunal informing it as a matter of courtesy that the Claimant had attempted to initiate an appeal against the liability judgment and seeking an update on its postponement application.
- 3.9 The Tribunal agreed to postpone the hearing and re-list it on the first available date from September 2024. The Tribunal noted that the Claimant had by now appealed against the liability judgment but determined that it was consistent with the overriding objective to deal with the costs application in any event. We noted that any costs judgment could be stayed if appropriate. The Tribunal also noted that the Claimant still had not provided any response to the costs application. In those circumstances, we directed that if the Claimant did not do so by 17 June 2024, the Tribunal would assume that she did not want to respond to or participate in the costs hearing. In those circumstances, the Tribunal considered that it would be consistent with the overriding objective to determine the costs application on the papers and notified that parties that, in the absence of any response from the Claimant, that is what the Tribunal would do.
- 3.10 The Claimant did not provide any response. On 16 July 2024 the Tribunal therefore notified the parties that the costs application would be dealt with on the papers by the Tribunal on 20 September 2024.
- 3.11 The Claimant did not provide any response or communication to the Tribunal about the costs application.
4. The reconsideration application was then made as follows:
- 4.1 The Tribunal's costs judgment was sent to the parties on 25 September 2024.
- 4.2 On 24 October 2024 the Claimant wrote personally to the Tribunal seeking reconsideration of the costs judgment. Much of the application was concerned with the merits of the liability judgment and was not relevant. However, the Claimant also provided, for the first time, information about her personal circumstances and ability to pay a costs order. In particular, she said that shortly after the Tribunal's liability judgment was issued, she had a house fire that made her and her family homeless and that they were in financial distress.
- 4.3 On 4 November 2024 I ordered the Claimant/her legal representative to provide confirmation about whether she was still legally represented. I also ordered her to provide an explanation why her reconsideration application was not made within 14 days of the costs judgment being

sent; evidence about the house fire and its impact on her financially and practically; and an explanation for the failure to respond to or comply with the Tribunal's orders about the costs application throughout much of 2024.

- 4.4 The Claimant's legal representatives came off the record on 18 November 2024. On the same date, the Claimant provided further information. She said that she had been living in temporary church accommodation and that the instability had made it difficult to manage even routine things, let alone engage with legal proceedings. She said that she was not now able to pay her legal fees, leaving her without legal representation, and that attempts by her legal team to secure instructions from her had been hampered by financial limitations and communication issues. Her representatives had made several attempts to secure instructions from her, but she had mostly been unable to provide them. She said that the loss of her family home left her with significant financial shortfalls. She had debt, including three credit cards, and was being chased for her legal fees. She said that she had been struggling with care for her mother too, and had to move away from engaging with her legal representatives. The Claimant provided documentation from the Fire and Rescue Service confirming that her house had been rendered uninhabitable by a fire on 4 December 2023.
- 4.5 On 20 November 2024 I extended time for the reconsideration application to be made. I ordered the Claimant to provide evidence about her financial position if she wished to rely on evidence.
- 4.6 The Claimant provided a Council tax liability order for arrears of £1758.50 and three credit card bills (totalling around £7,000) on 12 December 2024. The Respondent responded, identifying gaps in the evidence provided, and some discrepancies between what the Claimant had said in her original reconsideration application and what the Claimant had now provided.
- 4.7 The Claimant provided some further evidence on 24 December 2024, including information about her rent, overdue energy bills and a loan in her husband's name of around £14,000.

Legal principles

5. Rules 68 to 70 of the Employment Tribunal Procedure Rules 2024 govern reconsideration applications. A judgment may be reconsidered when the Tribunal considers that it is in the interests of justice to do so.
6. The Tribunal must give effect to the overriding objective. It has a broad discretion, but must act judicially, having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other party to the litigation, and the public interest in finality of litigation: see *Outasight VB Ltd v Brown* [2015] ICR D11 EAT. The test is not one of "exceptional circumstances." Reconsideration may be necessary if there is new evidence that was not available to the Tribunal at the time it made its judgment. The principles in *Ladd v Marshall* [1954] 3 All ER 745, CA apply: the applicant must 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. However, even if those principles are not strictly met, the

interests of justice may still require a reconsideration e.g. where some additional factor or mitigating circumstance means that the evidence in question could not have been obtained with reasonable diligence at an earlier stage: see *Outsight*.

Conclusions and application of the law

7. Applying those principles, I have concluded that it is necessary in the interests of justice to revoke the costs judgment, for the following reasons.
8. The Claimant has provided evidence that she did indeed suffer a house fire that rendered her home uninhabitable in December 2023. That is an exceptional situation. I accept that it had two consequences: first, that it has put the Claimant in an extremely precarious financial situation and, secondly, that it and its aftermath have prevented her from properly communicating with her legal representative.
9. The evidence provided by the Claimant about her financial position is incomplete, but I am nonetheless satisfied that she has substantial debts and is in a precarious financial position. She owes large sums on credit cards, and is merely meeting the minimum payments rather than paying off debt. She has Council Tax arrears and overdue energy bills. She owes a substantial sum to her legal representatives. That evidence all demonstrates that she is struggling to cope financially. She is still in temporary rented accommodation following the house fire. She works as a nurse but has had some sickness absence.
10. The Claimant says, and I accept, that the house fire and its aftermath had an effect on her own health and also meant that she was not providing instructions to her legal representatives or communicating properly with them. It is clear that she has not paid their bills.
11. Considering the *Ladd v Marshall* principles, the Claimant has provided new evidence that was not available to the Tribunal when it made its costs judgment. It is apparently credible, relevant and would likely have had an important influence in relation to the costs application. The Tribunal must take into account the person's ability to pay a costs order when deciding whether to make one. It has a discretion whether to make an order at all and, if so, for how much. The Claimant's exceptional situation involving a house fire, being accommodated in temporary accommodation and experiencing financial distress, would have been highly relevant to those matters. The evidence was, of course, available at the time that the Tribunal was dealing with the costs application. Indeed, as set out above, the Tribunal repeatedly ordered that the Claimant respond to the application and provide relevant evidence, and that was not done. However, it seems to me that this is one of the rare cases when, even though that part of the *Ladd v Marshall* principles is not strictly met, the interests of justice still require a reconsideration. That is because there is powerful mitigation explaining why the evidence was not provided at the time: the Claimant's house had been made uninhabitable by a fire, she was housed in temporary accommodation and struggling to deal with her legal affairs, she was struggling financially, and she was unable to pay her legal fees. That is

why information about her situation and her ability to pay a costs order was not provided to the Tribunal.

12. I take careful account of the importance of finality in litigation, and of the interests of the Respondent. It is a public body and currently has the benefit of a costs judgment following litigation that the Tribunal found was unreasonably pursued. Those are important matters and weigh heavily. They are somewhat tempered by the fact that the Claimant's financial position, as now understood, makes it extremely unlikely that the Respondent would recover the amount of the costs order in full from the Claimant in the short term. Enforcing the judgment would be likely, itself, to be costly. Payment by instalments might be the outcome. Taking into account all those matters, I have concluded that the Claimant's personal and financial situation, as now understood, mean that it is necessary in the interests of justice to revoke the costs judgment,. Had the Tribunal known at the time of the costs application about the Claimant's exceptional situation, it is highly unlikely that it would have exercised its discretion to make a costs order. The threshold for doing so was met; that has not changed. But the Claimant's precarious personal and financial situation would almost certainly have meant that the Tribunal decided that it was not consistent with the overriding objective to make a costs order and I have concluded that it is necessary for that order to be set aside as a result.

**Employment Judge Davies
28 April 2025**

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