



EMPLOYMENT TRIBUNALS

Claimant: Ms M Ottewill
Respondent: Iceland Foods Limited
Before: Employment Judge Cuthbert

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Relevant law on reconsideration

1. Under **Rule 68** of the Employment Tribunal Procedure Rules 2024 ("the Rules") a Tribunal may reconsider a judgment where it is **necessary** in the **interests of justice** to do so. On reconsideration, the judgment may be confirmed, varied or revoked.
2. The "interests of justice" allows a Tribunal a broad discretion to determine whether reconsideration is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be **finality** of litigation. It is unusual for a litigant to be given a "second bite at the cherry" and the jurisdiction to reconsider should be exercised by employment tribunals with caution (see ***Outasight VB Ltd v Brown*** UKEAT/0253/14 & ***Ebury Partners Ltd v Acton Davis*** [2023] EAT 40).
3. The procedure following a reconsideration application is for the Employment Judge who heard the case to review the application and determine if there are any reasonable prospects of the judgment being varied or revoked (**Rule 70(2)**). Reconsideration cannot be ordered simply because the applicant party disagrees with the judgment.

4. If the Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the Judge shall send a notice to the parties setting a time limit for any response to the application by the other party and seeking the views of the parties on whether the application can be determined without a hearing (**Rule 70**).
5. My role therefore, upon the considering the application based upon the papers initially, is to operate as a filter to determine whether there is a reasonable prospect of my decision being varied or revoked were the application to be further considered at a reconsideration hearing.

Process

6. I heard the claimant's case at an in person hearing on 13 and 14 January 2025 and dismissed her claims, giving an oral decision and reasons. The claimant subsequently requested written reasons, which were sent to the parties on 7 February 2025.
7. On 4 February 2025, the claimant sent a six-page letter to the Tribunal requesting that the judgment be reconsidered, with 13 numbered points/grounds. Following receipt the written reasons, the claimant indicated on 7 February and subsequently that she wished to proceed with the reconsideration application.
8. I have considered the claimant's application against the relevant legal framework above and against the judgment and reasons which she asks to be reconsidered.

Consideration of the claimant's application

9. My original decision was as follows, in summary.
10. The claimant was dismissed by the respondent from her role as a supervisor after nearly two years' continuous sickness absence, due to depression and anxiety. At the point of dismissal, there was no clear prospect of a return to work and further medical treatment (cognitive behavioural therapy) for the underlying mental health issues lay ahead.
11. The claimant argued that the respondent should have considered alternative employment rather than dismissing her. She was, however, signed off as unfit for all work and there was no evidence of any other work she could have undertaken for the respondent which would have enabled her to return to work.
12. The claimant also argued that the respondent should have awaited the outcome of the further medical treatment before dismissing her. There was, however, no clear indication as to how long this treatment would take or whether it would be successful.
13. The claimant also argued that the decision to dismiss her had been made in advance of the final capability hearing at which she was dismissed, but the evidence which was adduced during the hearing did not, in my view, show this as being the position.

14. The claimant gave oral evidence and was cross examined by the respondent; the respondent's dismissing manager gave oral evidence and the claimant had the opportunity to question him and did so.
15. At times during the hearing, it was necessary to move matters along. This was entirely routine and to ensure that the oral evidence and submissions focused upon relevant matters, namely the claimant's claims as set out in her ET1 (page 7 of the hearing bundle) and as clarified at an earlier preliminary hearing in the list of issues (pages 42 – 44 of the hearing bundle) and that the final hearing did not dwell on matters and disputes which were not part of, or were irrelevant to, the legal complaints to be determined.
16. This approach was in accordance with Rules 3 and 41 of the Rules and the Overriding Objective.
17. In the circumstances, the claims for unfair dismissal and disability discrimination were dismissed.
18. In terms of the claimant's application for reconsideration:
 - a. The following grounds seek, impermissibly, to re-argue points which I considered in reaching the judgment:
 - Ground 1 – *"pre-determination of dismissal and job advertisement evidence"*.
 - Ground 2 – *"Managers' conduct and prior knowledge of my dismissal"*.
 - Ground 3 – *"removal from work rotas"*.
 - Ground 5 – *"medical treatments and failure to consider my needs"*.
 - Ground 9 – *"falsely claims regarding my absence"* (sic).
 - Ground 10 – *"no support during the [internal capability] hearing"*. (in essence a complaint about the conduct of the dismissal meeting).
 - Ground 11 – *"Incorrect claim that I did not attend welfare meetings"*.
 - Ground 12 – *"Incorrect claim that I kept canceling meetings"* (sic).
 - b. The following grounds seek, impermissibly, to challenge the judgment by raising matters which were not part of the claimant's case or were irrelevant to the issues and had no bearing upon the legal complaints which fell to be determined at the hearing:
 - Ground 4 – *"request for a different manager to handle my case"*.

- Ground 7 – *“misrepresentation of employment history”*.
 - Ground 8 – *“failure to consider reasonable adjustments for epilepsy”*.
 - Ground 13 – *“failure to consider the link between epilepsy and depression”*.
- c. The following grounds seek, impermissibly, to challenge the judgment by alleging bias and unfair process at the Tribunal hearing. I was satisfied that both parties had a fair and proper opportunity to put their respective cases forwards at the hearing and that they received fair and proper consideration with reference to the relevant law. Allegations of bias would be a matter for any appeal, not for a reconsideration application.
- Ground 6 – *“unfair hearing and procedural error”*.
 - General narrative set out after Ground 13, four paragraphs which contain various complaints about the conduct of the Tribunal hearing.
19. Achieving finality in litigation is part of a fair and just process. It is not necessary in the interests of justice to reconsider my decision. There is no reasonable prospect of the judgment being varied or revoked. So, the application for reconsideration is refused under Rule 70(2).

Employment Judge Cuthbert

Date: 1 March 2025

JUDGMENT SENT TO THE PARTIES
ON 14 March 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE