



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**Respondent**

AND

Mr H Wilkins

The Royal Devon and Exeter  
NHS Foundation Trust

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**ON** 16 November 2017

**EMPLOYMENT JUDGE** A Goraj

### JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decisions contained in the Judgment dated 27 September 2017 being varied or revoked.

### REASONS

1. The claimant has applied for a reconsideration of the reserved judgment dated 27 September 2017 which was sent to the parties on 2 October 2017 ("the Judgment"). The grounds for the claimant's application are set out in a document dated 15 October 2017 which was received at the tribunal that day ("the application").
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of

Procedure 2013 (“the Rules”). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit and the application has accordingly been determined on its merits in accordance with Rules 70 and 72 of the Rules.

3. The tribunal has addressed the matters raised in the order raised in the application unless otherwise indicated below.

## **THE LAW AND THE CONCLUSIONS OF THE TRIBUNAL**

### **THE LAW**

4. The tribunal has had regard in particular to:-
  - (a) Rules 70 -72 of the Rules referred to above including, that the grounds for reconsideration are limited to those set out in Rule 70, namely that it is necessary in the interests of justice to do so. The interests of justice (including the right to finality in litigation) apply to both parties.
  - (b) The Employment Judge is (a) required to consider as a preliminary matter pursuant to Rule 72 (1) of the Rules whether there is any reasonable prospect of the relevant decisions being varied or revoked and (b) if not so satisfied to dismiss the application at that stage.
  - (c) The guidance contained in **Trimble v Supertravel Ltd [1982] ICR 440 EAT**, including that if a matter has been ventilated and argued at a tribunal hearing any error of law falls to be corrected on appeal and not by review.

### **THE CONCLUSIONS OF THE TRIBUNAL**

#### **(1) Paragraph 1- of the application – (the Judgment – paragraph 1 of the Declaration and paragraph 5 of the Reasons)**

5. The tribunal understands paragraph 1 of the application to be an application by the claimant to overturn the decision of the tribunal to refuse his application for reinstatement/ re- engagement on the grounds that any decision regarding such matter should be deferred as new evidence may come to light from a “National Guardian Office case review” which may have some bearing on such issue.

6. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decision contained in the Judgment relating to the claimant's application for reinstatement/ re-engagement being varied or revoked.
7. When reaching the above conclusion the Employment Judge has had regard, in particular to the following:-
  - (1) The tribunal gave careful consideration to the claimant's application for reinstatement and re-engagement at the Hearing on 3 and 4 July 2017 including (a) the oral and written evidence of the claimant and his witnesses and of the respondent and (b) the findings of the judgment which was sent to the parties on 9 February 2017 ("the liability judgment") (including regarding the state of the relationship between the parties and that the claimant's had contributed significantly to his dismissal by reason of his conduct) and (c) the claimant's ongoing failure to recognise such matters.
  - (2) Having given careful consideration to all of the above the tribunal concluded that it was not reasonably practicable for the claimant to be reinstated and/or reengaged by the respondent and dismissed the application. The tribunal delivered an oral judgment on 4 July 2017 explaining the reasons for its decision. The parties confirmed at the hearing on 4 July 2017 that they did not require the tribunal to provide written reasons for such decision.
  - (3) The tribunal is satisfied that (a) the claimant was afforded a proper opportunity to present his case (evidence and submissions) at the hearing regarding such matter and (b) the claimant is seeking to ventilate again matters which have already been considered/ could have been considered (where relevant to the matters in issue) and determined by the tribunal. Accordingly, the Employment Judge is satisfied that it is not in the interests of justice to allow the claimant to ventilate such matters again by way of the process of reconsideration.
8. This aspect of the application is therefore dismissed.

**(2) Paragraph 2 of the application – Calculation of the Monetary award**

**Paragraph 2(a) – Grading of my post (Reasons- paragraph 6 of the Judgment.**

9. The claimant appears to contend, notwithstanding that he accepts and acknowledges that any dispute relating to the grading of his post was not an issue which the tribunal was required to determine for the purposes of liability, that it should be taken into account for the purposes of remedy as (a) the grading of his post effected his pension and (b) the claimant's unfair dismissal and subsequently the tribunal's subsequent refusal to reinstate/ re- engage him made it more difficult for him to address the issue.
10. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decisions contained in the Judgment relating to this matter being varied or revoked.
11. When reaching the above conclusion the tribunal has had regard in particular to the tribunal's explanation of the position at paragraph 6 of the Judgment including in particular that there was no extant issue before the tribunal relating to the claimant's grading.
12. In all the circumstances, this aspect of the application is dismissed.

**Paragraph 2 (b) of the application – unclaimed expenses (Reasons Paragraph 9(6) of the Judgment)**

13. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decisions contained in the Judgment being varied or revoked.
14. When reaching this conclusion the tribunal has had regard to paragraph 9 (6) of the Judgment and in particular that although the relevant expenses were allegedly outstanding on the termination of his employment the claimant did not pursue a claim for such monies.
15. This aspect of the application is therefore dismissed.

**Paragraph 2 (c) of the application – net monthly pay (Reasons paragraph 9(1) and paragraphs 28-29 of the Judgment).**

16. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decisions contained in the Judgment being varied or revoked.
17. When reaching this conclusion the tribunal has had regard in particular to paragraphs 28 and 29 of the Judgment.

**Paragraph 2(d) of the application- (Reasons at paragraph 9(2) and Paragraph 32 of the Judgment).**

18. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decisions contained in the Judgment relating to this matter being varied or revoked.
19. When reaching this conclusion the tribunal has taken into account in particular :-
  - (a) The findings at paragraphs 32 of the Judgment including the relevant conclusions in the liability judgment (a) in respect of the state of the relationship between the parties at the time of the termination of the claimant's employment (b) the reasons why the tribunal considered the matter to be distinguishable from the position in the **Wardle** case and (c) that the claimant acknowledges at paragraph 2 (d) of the application that there was "plenty of evidence that the situation I was placed in was unsustainable and the situation was coming to a head one way or another".
  - (b) The claimant was afforded a proper opportunity to make his submissions on this issue and it is not therefore appropriate to allow the claimant to seek to ventilate the matter further by way of reconsideration.
20. This aspect of the application is therefore also dismissed.

**Paragraph 2 (e) of the application – (Reasons at paragraph 9(4) and Paragraphs 42-43 of the Judgment).**

21. The application in respect of the above is refused as the Employment Judge considers that there is no reasonable prospect of the original decision contained in the Judgment being varied or revoked.
22. When reaching this conclusion the tribunal has had regard in particular to the following :-
- (1) Paragraphs 42 – 43 of the Judgment including that having regard to the matters referred to at paragraph 43 of the Judgment the tribunal rejected the respondent's contention that the claimant's life expectancy for pension purposes should be limited to 80 and substituted an age of 85.
  - (2) Notwithstanding that the claimant had a full opportunity to present his case regarding this issue he did not adduce any evidence to the tribunal (including regarding his lifestyle or any medical or other expert evidence) relating to his life expectancy in support of his contention that his life expectancy should be assessed at 90.

**Conclusion**

23. Accordingly the tribunal refuses all aspects of the application pursuant to Rule 72(1) because there is no reasonable prospect of the decisions contained in the Judgment being varied or revoked on reconsideration.
24. Finally the tribunal accepts, as noted by the claimant, that there is typographical error in the Judgment as the claimant's employment with the respondent commenced on 14 June 2004 rather than on 14 June 2014 as stated at paragraph 15 of the Judgment. The tribunal is satisfied however that no further amendments are required in relation to such error.

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Employment Judge A Goraj  
Dated 17 November 2017

Judgment sent to Parties on