



## EMPLOYMENT TRIBUNALS

Claimant

**Ms M Drzymala**

Respondent

**v Royal Surrey County Hospital NHS  
Foundation Trust**

**Heard at: Reading**

**On: 4 January 2017**

**Before: Employment Judge Gumbiti-Zimuto**

**Appearance:**

**For the Claimant: Ms B Criddle: Counsel**

**For the Respondent: Ms s Keogh: Counsel**

**Upon** reconsideration of the judgment sent dated 20 January 2016 pursuant to an application by the respondent made pursuant to rule 71 of the Employment Tribunals Rules of Procedure 2013

## JUDGMENT

The decision of the Tribunal is confirmed.

## REASONS

1. The Tribunal began by considering whether it had failed to consider the written submission of the respondent. It was noted that in paragraph 81 of the judgment and reasons specific reference is made of the claimant's written submissions and that in paragraph 82, when dealing with the respondent's submissions, there is no mention of the respondent's written submissions. With the passage of time it is not possible from independent recollection alone to answer the question whether this is because of a simple omission or because for some reason we failed to consider the respondent's written submissions.
2. Having reviewed our notes of discussions and the notes of the hearing the Tribunal is satisfied that we considered the respondent's written submissions before making our decision. We are also satisfied that there are sufficient indicators from the content of the judgment for us to be satisfied that we considered the written submission at the time.

3. We are not satisfied that this point gives rise to any grounds for a reconsideration.
4. We have however gone on to consider whether the respondent's submission in substance gives rise to grounds for a reconsideration of the judgment. We are of the view that they do not give rise to grounds for a reconsideration. To the extent that the respondent's submissions raise issues which require a decision to be made they are matters that are to be considered at a remedy hearing when considering the question of the extent to which an award of compensation is just and equitable, as opposed to the question of whether the dismissal was unfair for the reasons we have set out in the judgment.
5. We have directed ourselves to consider whether there was any procedural error or defect which warrants a reconsideration and we are satisfied that there is not. We note that this is not a case where new evidence has come to light. We have considered whether there are any other factors that justify a review in the interests of justice.
6. The respondent has identified one aspect of the case that has to be resolved by a finding of fact. This concerns the question whether the claimant would have accepted any role that was offered to her other than a consultant role or similar. There is an exchange in the appeal hearing, which the claimant denies, that the respondent relies on. We have not set out a finding of fact in respect of it, however, as already stated this matter is relevant for remedy rather than liability and a decision can be made at the remedy hearing on this point.
7. We note that the respondent questions whether we gave consideration to the content of the appeal conducted by Nicola Waring-Edkins. We considered all aspects of the evidence in this case and only set out in the judgment what we considered necessary to decide the issues that we are to determine. The grounds on which we decided this case were not determined by the conduct of the appeal but by the fact that there was not a timely appeal.
8. There are factual questions, including matters such as whether the claimant would have accepted any role, which are live issues that need to be answered in the context of the remedy hearing and the question whether it is just and equitable to make an award of compensation to the claimant, none of these in our view affect the decision on liability.
9. We therefore confirm the decision sent to the parties on the 20 January 2016.

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**Employment Judge Gumbiti-Zimuto**

Sent to the parties on:

...7February 2017.....

For the Tribunal:

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