



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms B Sule

**Respondent:** Shoosmiths Solicitors & Others

Employment Judge Tom Ryan

## JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration made on 27 January 2020 is dismissed.

### REASONS

1. This is an application by the claimant for reconsideration of the judgment (including written reasons) sent to the parties at the end of February 2020. The application was first made by email on 27 January 2020, the day upon which the application was decided and reasons were given orally at the hearing. It was accompanied by a request for written reasons. The claimant was given the opportunity to set out the grounds of the application after she had received the reasons in writing. Those grounds were provided by the claimant on 8 March 2020. Regrettably, the application for reconsideration was overlooked until now. I apologise to the parties for that oversight.
2. The claimant seeks reconsideration of the tribunal's decision to strike out 14 claims presented to the tribunal in the course of 2019. For a full history of the litigation recourse must be had to the tribunal's earlier judgment and reasons.
3. The tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.

4. Under rule 71 an application for reconsideration must be made within 14 days the date on which the judgment (or written reasons, if later) was sent to the parties. I accept that this application was clearly made in time.
5. The approach to be taken to applications for reconsideration was set out in the case of **Liddington v 2Gether NHS Foundation Trust** UKEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
  - 5.1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
  - 5.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
  - 5.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
6. In paragraph 34 and 35 of the judgment Simler P included the following:

“A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”
7. The grounds for the claimant’s application for reconsideration extend to 32 numbered paragraphs. In the decision I distinguished between complaints that were essentially repetitions of earlier claims that had been determined and a new allegation concerning a more recent decision of Mr Boss of the respondent.
8. The claimant’s grounds for reconsideration intermingle the reasons for striking out the repeated earlier claims and those for striking out the claim based on the recent decision of Mr Boss.
9. I consider that it is possible to identify those paragraphs which relate specifically to the more recent matter and those which relate to the earlier matters.

10. I first address those paragraphs of the claimant's application which deal with the earlier matters. It appears to me that the following paragraphs are dealing with the earlier matters: 1 - 9 and 19 – 31.
11. In my judgment there is only one matter raised those paragraphs which does not fall at the hurdle that "any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application". I consider that all the other matters in those paragraphs were either raised for my consideration at the earlier hearing or, insofar as they are re-cast in the application for reconsideration, could have been raised but were not.
12. The single matter that remains for determination arises from paragraph 4 of the application. The claimant there states:

"My claims have not been exhaustively litigated especially when it concerns various multiple conducts that have not been investigated, and litigated in a fair trial. Matters can be reopened at various times especially when new evidences of issues which are yet to be considered or investigated arise and in this instance there are various evidences in my claims that are yet to be considered and properly teased out by any tribunal."
13. For the reasons given in my earlier judgment and reasons I do not accept the statement in the first sentence can conceivably be justified. However, I do accept that a potential ground for reconsideration is that new evidence has come to light since the date of the first judgment. However, earlier authorities have suggested that this is an appropriate ground for reconsideration only where the evidence is either genuinely new evidence or pre-existing evidence which could not with reasonable diligence have been put before the judge at the first hearing. The claimant has not identified what that evidence is nor given any information to suggest that it is new evidence in the sense I have explained.
14. I therefore turn to consider the application for reconsideration insofar as it relates to the decision to strike out the complaint based upon the more recent decision of Mr Boss. I summarise the grounds as follows.
15. In paragraph 10 the claimant describes the complaint that she made to Mr Boss. I was not provided with that complaint at the original hearing. The claimant sent a copy of it to the tribunal when she sent her grounds for the application. I have read it. I do not consider it takes her application for reconsideration any further forward. It is useful background information for the tribunal.
16. In paragraph 11 the claimant alleged that Mr Boss's response lacked integrity and honesty and that her complaint should be investigated in order to maintain law and order. She also refers to an assertion that the complaint was out of time but it was recorded that it was common ground that at least some of her 14 claims in this respect were not out of time.
17. Paragraphs 12 and 13 do not contain relevant matters.
18. Paragraph 14 suggests that the complaint about Mr Boss's conduct should be considered under the Protection from Harassment Act 1997 ("PFHA").

19. Paragraph 15 refers to previous decisions of the tribunal and merely recites Mr Boss's refusal to investigate her recent complaint.
20. In paragraph 16 the claimant asserts that the complaint to Mr Boss is sufficient to sustain criminal liability under s2 of the PFHA.
21. The claimant refers in paragraph 17 to having a six-year limitation period for a claim under the PFHA.
22. In paragraph 18 the claimant reverts to the assertion of criminal liability.
23. Paragraph 32 recites the production of her original letter of complaint to Mr Boss.
24. In none of these paragraphs does the claimant raise any matter which is capable of leading to a reconsideration of the decision for striking out the complaints in respect of Mr Boss as having no reasonable prospect of success. Even if the claimant's analysis of the law relating to the PFHA is correct, these remain matters that must be raised, if at all, on appeal.
25. Taking all these matters into account I consider that there is no reasonable prospect of the original decision being varied in the interests of justice. In my judgment the matters set out comprise such an application as Simler P was describing in the paragraphs quoted above in the case of **Liddington**. I consider that the claimant has not provided any sustainable basis upon which a tribunal properly directing itself could consider that it was in the interests of justice to reconsider the judgement, revoke it and order a fresh hearing.
26. For all those reasons I refuse, with renewed apologies for the delay in so doing, the application for reconsideration at this preliminary stage.

---

Employment Judge Tom Ryan

Date 11 September 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 December 2020

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.