



## **EMPLOYMENT TRIBUNALS**

**Claimant:** Mrs Sally England

**Respondent:** The National Trust  
for Places of Historic Interest or Natural Beauty

**Before:** Employment Judge Hastie

### **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

The Claimant's application dated 30 July 2024 for reconsideration of the judgment dated 12 July 2024 is refused.

### **REASONS**

1. An email from the Claimant was received by the Tribunal on 30 July 2024. The Claimant seeks reconsideration of the judgment of 12 July 2024.
  
2. A reserved judgment and reasons was sent to the parties on 17 July 2024. All six of the Claimant's claims were dismissed unanimously. The claims were
  - a) Unfair constructive dismissal by reason of public interest disclosure.
  - b) Detriment on the ground of public interest disclosure.
  - c) Unpaid holiday pay.

- d) Unfair constructive dismissal by reason of health and safety.
  - e) Detriment on the ground of health and safety.
  - f) Breach of contract.
3. The Claimant's application for reconsideration relates to all her claims.
  4. Reconsideration applications are governed by the Employment Tribunal Rules of Procedure 2013 ("the Rules").
  5. 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.
  6. Rule 71 requires that an application for reconsideration be copied to all other parties. The Claimant's email of 30 July is copied to the Respondents solicitors. It follows that the Tribunal has jurisdiction to consider the reconsideration application.
  7. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
  8. The eighteen submissions relied upon by the Claimant are set out below in quotation marks and italicised text. These eighteen submissions are followed by the Tribunal's response to each in plain text.
  9. The Claimant's application for reconsideration is mainly presented under two headings. Firstly, "Procedural Irregularities" and secondly "Misapprehension of Facts".

10. In her application for reconsideration, the Claimant concludes by stating that,

*“The errors and misapprehensions not limited to the outlined above critically affect the fairness and accuracy of the tribunal’s decision.”*

11. From this statement it appears that the Claimant suggests that she has other points she could make but has not included in the eighteen submissions itemised in her application for reconsideration.

**Claimant’s submissions in support of her application based on “Procedural Irregularities” – five submissions.**

12. ***“Permitting Significant Changes to Respondent’s Witness Statement:***

*The tribunal allowed the respondent to make a substantial change to one of their witness statements, which removed included factual inaccuracies, after bias had been established. These changes were not scrutinised or questioned by the judge, leading to the respondent’s witness being wrongly perceived as credible. This procedural error has adversely affected the integrity of the proceedings.”*

13. The Claimant does not identify which of the witness statements she is referring to. The Claimant does not explain what the bias is that she refers to. The Claimant did not object to changes that were made to two statements following an application by the Respondent to correct minor errors relating to attendance at a meeting and a wrongly stated year. The changes did not require scrutiny or questioning due to their nature. The changes were set out in the written judgment at paragraph seventeen. An assessment of credibility was made in the round following all the evidence being heard and was not based solely on uncontested amendments made to statements.

14. ***“Denial of a Break During Cross-Examination: I was denied by continuation a necessary break during the cross-examination of witnesses. This denial resulted in undue fatigue and hindered my ability to effectively cross-examine and present my case. Such a procedural oversight undermines the fairness of the hearing.”***
  
15. The Claimant cross examined all five witnesses for the Respondent. The Claimant began her cross examination of the Respondent’s witnesses after lunch on Day 2 of the hearing (21 May 2024). At 4pm on Day 2, the Claimant was still cross examining the first of the Respondent’s witnesses. At 10am on Day 3 (22 May 2024), counsel for the Respondent pointed out that the Claimant needed to address the specific issues as listed in the Case Management Order of EJ Leverton. During the hearing, EJ Hastie sought to assist the Claimant by referring her to the specific pages in the bundle that contained the matters that the Claimant needed to actively put to the Respondent’s witnesses. There was a break. Cross examination by the Claimant continued, and there was a further break between 11.55 and 12.10. The Claimant concluded her cross examination of the first witness at approximately 12.30. There was then a lunch break between approximately 1 – 2pm. Between 2 – 2.15pm the second witness for the Respondent was cross examined by the Claimant. The third witness was cross examined by the Claimant between 2.20 and 4pm without a break. The hearing was adjourned until Day 4 (23 May 2024). The Claimant cross examined the third witness for a further 20 minutes at the start of Day 4. The Respondents fourth witness was cross examined by the Claimant until approximately 12.30. There was then an hour for lunch. The Claimant cross examined the Respondents final witness from approximately 1.55 until 2.45pm.
  
16. At the beginning of each day, the Tribunal emphasised that any party or witness requiring a break could request one at any time and this would be granted.

17. The Claimant did not request a break during her cross examination of the witnesses. The Claimant was given time to conduct her cross examination at her own pace. The Tribunal considered that there were sufficient natural breaks in the cross examination of the Respondent's witnesses as set out in paragraph 15 above.
18. ***“Failure to Address Sexist Remarks: The respondent's counsel made a sexist remark referring to me as "not a stupid woman." The tribunal failed to address or challenge this inappropriate comment, suggesting a lack of impartiality and fairness in the proceedings.”***
19. It is recalled that Counsel for the Respondent did make this remark. The Claimant did not raise this during the hearing or in closing submissions at the adjourned final day of the hearing on 14 June 2024. In the context of the cross examination of the Claimant, the Tribunal did not take the view that this was a sexist or derogatory remark . This remark had no relevance to the issues or the decision.
20. ***“Dismissive Attitude and Irrelevant Questioning: The tribunal permitted the respondent's witness to dismiss my evidence as "poppycock" and allowed respondent's counsel questioning about my current employment, which was irrelevant to the case and referred to in the judgement. This dismissive and irrelevant approach further compromised the fairness of the hearing.”***
21. The Tribunal cannot know exactly what a witness is going to say in response to a question. It is not a matter for the Tribunal to permit the terms in which a witness chooses to respond under oath or affirmation. It is to be expected that opposing parties will have opposing views about the evidence of their opponents, and consequently may be perceived as being dismissive.

22. The Tribunal cannot police every word of cross examination. This would be impractical and contrary to maintaining a fair approach. While the Claimant may now view this line of questioning as irrelevant, she did not raise this point during the hearing at any time.

23. ***“Refusal to Admit Audio Recordings: Despite confirming with the tribunal that I could use audio recordings to support my evidence and being advised to bring my own device, the tribunal then refused to allow these recordings to be played on the instruction of the respondent’s counsel. These recordings, had they been admitted, would have contradicted the tribunal’s findings regarding the downgrading of the PDR, highlighting a significant procedural flaw.”***

24. There was no Tribunal order made in advance of the hearing that permitted the audio to be played. The Claimant had been informed that the hearing venue did not have the equipment to play audio recordings so she would need to bring her own equipment if she was applying to play audio. No transcript had been provided by the Claimant. The recordings had been made without the knowledge or consent of the persons the Claimant had recorded. The Tribunal heard representations on the admission of the audio recordings. Respondent’s counsel stated that he had not listened to the recordings save for an excerpt sent to him by the Claimant at the end of Day 1. The Claimant was asked if she was saying that the oral witness evidence was inconsistent with the audio. The Claimant indicated that this was not the case. The Tribunal retired to consider the representations and decided not to admit the audio. Reasons were given. The Tribunal has the power to regulate its own proceedings and decide what evidence to hear. At no time did the Tribunal act on the instructions of the Respondent’s counsel.

**Claimant's submissions in support of her application based on "Misapprehension of Facts" - thirteen submissions.**

25. ***"Misapprehension of Protected Disclosures*** *The tribunal has misapprehended the nature of my protected disclosures concerning lone working without an effective means of communication. The judge incorrectly deemed these concerns as subjective and inapplicable to other workers in similar roles, despite the fact that these issues were formally raised during a team meeting. This oversight undermines the validity of the disclosures and their impact on workplace safety."*

26. The Tribunal reached its judgment on the evidence as it was presented by the parties.

27. ***"Misinterpretation of Evidence Regarding Absence*** *The tribunal erroneously interpreted the absence of evidence concerning the respondent's failure to investigate and record near misses as an absence of evidence. This conclusion ignores the fact that the respondent did not undertake an adequate investigation, and is unsupported by evidence, a critical procedural failure that should have been addressed."*

28. The evidence of the Respondent's witness was clear that the incident was not deemed as a near miss. The Tribunal reached its judgment on the basis of the presented evidence.

29. ***"Unsupported Claims About Respondent's Regard*** *The tribunal found that the respondent demonstrated significant regard for my entitlement not to be disturbed when not at work. This claim lacks evidential support and does not reflect the respondent's actual practices, which were not adequately considered in the decision."*

30. Findings were based on the evidence presented to the Tribunal during the hearing.

31. ***“Incorrect Description of Requested Changes.*** *The tribunal mistakenly described my request as a change in working hours rather than the evidence based request for a change in working days. This mischaracterisation affects the tribunal’s understanding of the nature of my request and the respondent’s response.”*

32. The Claimant relied on a reduction in her pay as a detriment. She had requested a change in her working pattern which inevitably meant a reduction in pay. On the facts, it was not relevant whether this was stated as a reduction in hours or days.

33. ***“Refusal to Admit Audio Recordings.*** *The tribunal’s refusal to permit the playing of audio recordings, which I was advised to bring a device to play, was a significant procedural error. These recordings were crucial for demonstrating discrepancies in the downgrading of the PDR and would have conflicted with the tribunal’s findings.”*

34. This point has been responded to above at paragraph 24.

35. ***“Introduction of New Evidence by the Judge.*** *The tribunal outcome introduced new evidence regarding building layout and access to a vehicle after I was told to wait outside in the rain by the area manager. This evidence was introduced in the outcome was not part of the original case, leading to an unfair and inconsistent decision.”*

36. The Tribunal can only reach a judgment on the evidence provided by the parties. In this instance the evidence came from the Respondent’s witness, Mrs Mortimore. She told the Tribunal in response to cross



examination by the Claimant about the layout of the offices and the location of the Claimants car in the car park outside the offices. This witness was able to give evidence about what the Claimant was wearing on that day and was equally detailed in her responses to other questions asked by the Claimant. There was no new evidence introduced by the Judge.

37. ***“Misunderstanding of Grievance Procedure.*** *The tribunal’s misunderstanding of the respondent’s grievance procedure, particularly the distinction between option 1 and option 2, has adversely affected the evaluation of my grievance. This misunderstanding has been to my detriment and influenced the tribunal’s assessment.*
38. The Claimant raised eight grievances in total. In her submission, she does not identify which grievance she is referring to. She does not explain what the claimed distinction is. She does not explain what the misunderstanding is that she relies upon. Findings were based on the evidence presented to the Tribunal during the hearing.
39. ***“Failure to Understand Risk Assessments.*** *The tribunal failed to recognise that the respondent’s risk assessments did not follow company procedures. Additionally, the tribunal did not consider evidence from the respondent’s own expert, who made recommendations for lone workers. The lone phone provided as, and supported by the Tribunal as a solution to lone working was also ineffective due to signal issues, which the tribunal overlooked.”*
40. The Tribunal considered all the evidence that was presented to it. It is unclear how this submission is relevant to the Claimants claim that her disclosures led to detrimental treatment, or any other claim.

41. ***“Misinterpretation of Causal Link and Protected Disclosures. The tribunal’s finding that there was no protected disclosure or causal link is based on selective evidence and does not adequately reflect the full context of the case.”***
42. The Tribunal reached its judgment on all the evidence presented. The Claimant does not explain her assertion of how this finding was based on selective evidence.
43. ***“Contradiction with Health and Safety Advisor’s Advice. The tribunal’s determination that lone working without an effective means of raising an alarm is ‘low risk’ directly contradicts the respondent’s own procedures and advice from the respondent’s own health and safety advisor. This discrepancy impacts the fairness of the tribunal’s decision.”***
44. There was no direct oral evidence presented to the Tribunal from the Respondent’s health and safety advisor. The Respondents witnesses were consistent in their evidence that the relevant location was low risk. It is a matter for the Tribunal to make findings based on the evidence presented. Such findings may not accord with the view of the Claimant or Respondent.
45. ***“Inaccurate Assessment of Phone Signal at Lower Pentire Barn. The tribunal’s conclusion regarding poor phone signal at Lower Pentire Barn is contradicted by the respondent’s own website, more overlooked evidence, which to this day advices (sic) no phone signal. This contradiction raises concerns about the tribunal’s assessment of safety risks for lone workers.”***
46. The Respondent’s website provides information for potential customers. The Tribunal accepted the evidence that was given by the witnesses at the hearing.

47. ***“Authority on Health and Safety.*** *The tribunal has presented itself as an authority on health and safety, making comments that are inconsistent with the advice of the respondent’s health and safety advisor. This misrepresentation affects the accuracy and fairness of the decision.”*

48. The Tribunal is not an authority on matters of health and safety. The Claimant has not identified what comments she is referring to here. Reference was made to a health and safety advisor. She did not give evidence at the hearing. There was some written documentation from the advisor that was considered by the Tribunal. Findings were based on all the evidence presented to the Tribunal.

49. ***“Availability of Pay Slips.*** *The tribunal stated that my pay slips are available even post-employment, yet the respondent’s counsel and their people services representative were unable to obtain these during the tribunal proceedings. This discrepancy highlights a potential misunderstanding or misrepresentation of the availability of this evidence.”*

50. The Claimant produced no documentary evidence in support of her claim for unpaid wages. During the course of the hearing, one of the respondents witnesses explained how an ex-employee could access pay records. The Respondent was clear that the Claimant could obtain them if she wished to do so. The Claimant did not do this. The burden of proof was on the Claimant. She failed to discharge this burden.

51. The hearing was the Claimant’s opportunity to give information, ask questions and raise issues, which she did. The Claimant had extensive opportunity to ask questions of all witnesses and advance all relevant arguments. The Tribunal sought to assist as appropriate.

52. The Tribunal gave all the issues full consideration and prepared its decision and reasons in detail. The Claimant seeks to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings.
53. The application is an attempt to re-litigate what was explored in detail at the hearing. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The Claimant's application does not identify any new matters.
54. It is not the purpose of reconsideration to allow a party to dispute a determination that the party disagrees with, and it is a fundamental requirement of litigation that there is certainty and finality.
55. I have kept in mind the decision in **Outasight v VB Brown 2015 ICR D 11**. In this case it was confirmed that Employment Tribunals have, under Rule 70, a broad discretion in determination of reconsideration applications. It was stated that discretion must be exercised judicially: "which means having regard not only to the interests of the party seeking the review or reconsideration, but also to 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".
56. Reconsideration cannot be ordered simply because a party disagrees with the Judgment. Further guidance was provided by the President of the Employment Appeal Tribunal in **Liddington v 2gether NHS Foundation Trust UKEAT/0002/16/DA**,

*"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 is 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.”*

57. All of the submissions made by the Claimant in her reconsideration application are addressed above, including those that are said to be procedural.

58. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

---

Employment Judge Hastie  
Dated 17 September 2024

Reasons sent to Parties on  
18 October 2024

Jade Lobb