



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms B Evans-Shaw

**Respondent:** Lancashire County Council

**Heard at:** Manchester

**On:** 14 August 2018  
(in chambers)

**Before:** Employment Judge Feeney

## REPRESENTATION:

**Claimant:** Not in attendance

**Respondent:** Not in attendance

## JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration of the Judgment sent to the parties on 6 February 2018 fails and is dismissed.

## REASONS

1. The claimant applied for a reconsideration of her original decision which was promulgated on 6 February 2018. There has been some delay as the respondent's comments were sought.

### The Law

2. Reconsideration of judgments is contained in rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says that:

- “(70) A Tribunal may, either on its own initiative or on the replication of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.
- (71) Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing within 14 days of the date on which the written record or other written communication of the original decision was sent to the parties, or within 14 days of the date when the written reasons were sent out (if later) and shall set out why reconsideration of the original decision is necessary.

Process

- (72) An Employment Judge shall consider any application made under rule 71:
- (i) If the Judge considers there is no reasonable prospect of the original decision being varied or revoked the application shall be refused and the Tribunal shall inform the parties of that refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.
  - (ii) If the application has not been refused under paragraph (i) the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (i), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further representations.
  - (iii) Where practicable the consideration under paragraph (i) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it, and any reconsideration under paragraph (ii) shall be made by the Judge or, as the case may be, the full Tribunal which made the original which made the decision. Where that is not practicable the President, Vice President or Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, either shall direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.”

**The Facts**

3. The claimant was dismissed following a situation in which she was detained by the Police and subsequently was involved in Facebook communications with a Police Officer involved in that situation. She was charged as a result with malicious communications for which she was convicted. An anonymous informant advised the school of these matters and the school began disciplinary proceedings against the claimant and dismissed her by a letter dated 19 May. The claimant appealed but her appeal was unsuccessful.

4. At the hearing in January 2018 I found that the claimant had been fairly dismissed and that her dismissal was not a wrongful dismissal.

5. In her application for reconsideration the claimant asked:

- “(1) Why have you not made a decision regarding my claims for unlawful deductions of earnings or breach of contract?
- (2) Why have you not made a comment or reference to my employers failing to find me suitable alternative employment within the County Council?
- (3) What consideration did you give for allowing the statements and the MG5 report from the criminal proceedings to be used as evidence in the Employment Tribunal?
- (4) Why have you considered that I may have brought my employers into disrepute when my employers never made that claim that I had? I believe that a speculative and marginal danger does not suffice.
- (5) That my argument to a right to a private life regarding your explanation is flawed regarding UK law. You stated in the Employment Tribunal it was only a qualified right therefore if you consider my right to a private life does not apply to me in this instance then what public protection risk do you consider I am?
- (6) I believe you have substituted your own views over that of my employers? What is your response to this?
- (7) What consideration did you give regarding the email to Vanessa Chester stating that the minutes were incorrect as I was categorically told on the date of my appeal that I was not allowed to wait for the results and no email or correspondence was sent to me to rebut my claim?
- (8) Having proved that the Head Teacher was an unreliable and untrustworthy witness regarding a laptop and the fact she had no minutes or signed copy of the minutes or a return to work [interview] which is County policy, what consideration did you give to this?
- (9) The Code of Conduct which you stated was any breaches or known breaches of the law belong specifically to the whistle-blowing policy as

stated in my appeal notes. What evidence did you consider that this was not the case?"

## Conclusions

6. Regarding the points the claimant makes I have concluded as follows:
- (1) Regarding any unlawful deductions claim, none was apparent from the file and this was not mentioned at Tribunal. The claimant's breach of contract claim is described in Employment Law as wrongful dismissal and therefore this was dealt with although the claimant might not have been aware that this was the description of the breach of contract claim.
  - (2) Regarding suitable alternative employment, where a dismissal for gross misconduct is upheld there is no requirement on the respondent to seek suitable alternative employment as it presupposes that the respondent no longer has any confidence in the employee as an employee, therefore it is not appropriate to consider alternative employment in a gross misconduct situation.
  - (3) Regarding the reports, as these documents were used by the respondent it was necessary to examine the matters on which the respondent made their decision. There was no legal barrier to these statements being used.
  - (4) With regard to the damaged reputation, the respondent did rely on reputational damage as part of the reason for dismissal.
  - (5) Regarding the right to a private life, the malicious communication was something put on Facebook which is not "private life" – it is in the public domain, and in fact the whole reason the claimant used Facebook was so she could contact people that this police officer knew and who she did not know. The claimant therefore put her actions in the public domain.
  - (6) As regards substituting my own views, no grounds were submitted to support this. In any event it is impossible that I substituted my own view as I upheld the respondent's decision.
  - (7) Regarding the email to Vanessa Chester, the matter was not relevant to the merits of the claimant's dismissal and appeal.
  - (8) As regards the laptop issue, whilst the laptop issue was resolved in favour of the claimant this did not mean that I did not find the Head Teacher credible, and the issue was essentially irrelevant to the ultimate matters the claimant was dismissed for.

- (9) Regarding the Code of Conduct, this was not the only matter taken into consideration. It is correct it is in the whistleblowing policy, however this does not by itself mean that it is not of relevance.

### **Overall Conclusion**

7. I make my decision under Rule 70(1) referred to above. My overall conclusion is, having considered all the points the claimant made, that the application for reconsideration has no reasonable prospects of success and it is dismissed.

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Employment Judge Feeney

Date: 14<sup>th</sup> August 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 August 2018

FOR THE TRIBUNAL OFFICE

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