THE EMPLOYMENT TRIBUNALS

Claimant: **Ms S Olukoya**

Respondent: **London Borough of Tower Hamlets**

Before: **Employment Judge M Warren**

DECISION ON AN APPLICATION FOR RECONSIDERATION

The claimant's application for a reconsideration is refused on the grounds that there is no reasonable prospect of the Judgment on Remedy being varied or revoked.

REASONS

Background

1. The parties were provided with an oral Judgment as to remedy on 8 June 2018. Written Reasons are being provided at the same time as this decision. By an email dated 22 June 2018, (which has only just come to my attention) Ms Mallick for the Claimant, applied for a reconsideration of our Judgment in relation to:

    1.1. Our uplift of 1% for the Respondent's breach of the ACAS code;

    1.2. Our failure to award aggravated damages;

    1.3. Our failure to award exemplary damages, and

    1.4. The amount of our award for psychiatric damages.

Law

2. Rules 70 to 73 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of Tribunal Judgments as follows:

*"**Principles***
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A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application
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Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) 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 that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process
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(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.
…

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; …"

3. In Outasight VB Ltd v Brown UKEAT/0253/14 the EAT held the Rule 70 ground for reconsidering Judgments, (the interests of justice) did not represent a broadening of discretion from the provisions of Rule 34 contained in the replaced 2004 rules, (at paragraphs 46 to 48). HHJ Eady QC explained that the previous specified categories under the old rules were but examples of where it would be in the interests of justice to reconsider. The 2014 rules remove the unnecessary specified grounds leaving only what was in truth always the fundamental consideration, the interests of justice. This means that decisions under the old rules remain pertinent under the new rules.

4. The key point relating to reconsideration is that it must be in the interests of justice to reconsider a Judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing, a mistake as to the law, a decision made in a party's absence. It is not the purpose of the reconsideration provisions

to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have, "a second bite at the cherry", (per Phillips J in Flint v Eastern Electricity board [1975] IRLR 277).

Discussion and Conclusion

5. Ms Mallick's application is the archetypal, "second bite at the cherry". She simply tries to have another go at putting the arguments she put, or perhaps feels she ought to have put, at the original hearing. The interests of justice are that there should be finality in litigation. For that reason alone, the application has no reasonable prospects of success.

6. In any event, nothing she has written in her application remotely suggests that any aspect of the tribunal's Judgment on Remedy were wrong.

Employment Judge M Warren

18 July 2018