



EMPLOYMENT TRIBUNALS

Claimant: Ms S
Respondent: E Limited

JUDGMENT

The Claimant's application dated 8 March 2023 for reconsideration of the judgment sent to the parties on 23 February 2023 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the following reasons.

Procedure

- 1 Rule 70 provides that a Tribunal may reconsider any judgement where it is necessary in the interests of justice to do so. On reconsideration the original decision may be confirmed, varied or revoked.
- 2 A reconsideration should be presented in writing and copied to all parties within 14 days of the date on which the written record was sent to the parties. An Employment Judge shall consider any application made under rule 71 and if the Judge considers there is no reasonable prospect of the judgement being varied or revoked, the application should be refused, and the Tribunal shall inform the parties of the refusal.

Basis for seeking reconsideration

- 3 The Claimant has applied for reconsideration within the requisite time period. The Claimant's primary reason for seeking reconsideration is that she believes fabricated photographs were submitted as part of the investigation and included in the bundle of evidence. She specifically refers to an e-mail which was sent to the Tribunal by the Respondent during the course of the hearing on 27th October 2022. That email was sent with a view to the photograph time (which I shall refer to as the time stamp) being shown to the Tribunal and the Claimant. The reason for this was that the Claimant disputed

the validity of the photographs during the hearing. The Tribunal were told that she had accepted the Bundle previously so that the Respondent had no warning that this matter would be in contention. Alleging that a document is fraudulent is a serious matter. Nevertheless, in order to address the Claimant's concerns, during a break the Respondent sent an email to the Tribunal and the Claimant with one photo where the computer time stamp was clearly shown on it.

- 4 The Claimant argues that the emailed image on her iPhone shows a stream of photographs of the bottom of the screenshot. She says that cannot be seen when the e-mail is opened on a computer. On looking at the stream of photographs, she says only one of the two photographs that Mr GR said were taken appears. If two photographs were taken the other one should also be in that stream (which I understand to be a reference to what is called the camera roll set of images which are visible at the bottom of the photo).
- 5 The Claimant argues that if the two photographs were genuinely taken at the date and time the Respondent claims, both photographs should appear in the stream of photographs, one following the other.
- 6 The Claimant also infers that the fabricated photographs wrongly claimed that she was in the room on the second floor at 4:41 PM providing an alibi for another member of staff.

Consideration

- 7 It is not normally considered to be in the interests of justice for a Tribunal to reconsider a case when the evidence in question was available to the parties at the time of the hearing. Although the Claimant says that the stream of camera roll photographs could not be seen when opening the e-mail on the computer, that is not the case. The e-mail received by the Tribunal which was copied to the Claimant and contained the photograph clearly shows this camera roll, whether viewed on a computer or on any other device. Accordingly, this is not new information.
- 8 Furthermore, evidence of fraud must be clear, as it is a very serious allegation. As noted, at the hearing, the Claimant disputed the photographic evidence but had not objected to the Bundle of documents for the hearing. In consequence the Respondent had no prior warning of her objection to the photos. Nevertheless, the Respondent offered to send a photo by email to show the time stamp during a break. This is the reason why the Claimant received the email showing the camera roll at the bottom.
- 9 The absence of one photograph on the camera roll is not evidence that both photographs were fabricated or that the time stamp on the photo in question was fabricated. All the Claimant is pointing to is evidence that one photograph did not appear on the camera roll at that time. There may be various explanations. It may simply indicate that the other photo had been moved or deleted from that camera system by the date of the hearing. Both photographs show the same location with the same people in view, albeit having moved slightly, which is consistent with a brief time lapse. The contents are such that they must have been taken closely together. The date stamp on the timed copy of the photograph produced in the email is clear. In

consequence the argument that the absence of the one photo on the camera roll at that particular time indicates that the photographs were fabricated has little likely prospect of success.

- 10 Nevertheless, in order to give the Claimant's argument the fullest consideration, I have assessed what would happen if the Claimant were to succeed in her argument that the two photographs are unreliable evidence. In that event, the Tribunal would then ignore the two photographs. If the Tribunal were to do so, there is a third photograph showing the Claimant at the same spot, which was taken by another individual within two minutes of the two photographs which the Claimant disputes, and which was also contained in the bundle of documents referred to at the hearing.
- 11 In case the Claimant's case is that all three photographs should be ignored, I have assessed that position.
- 12 The Tribunal reached the conclusions that the Claimant's claim for automatically unfair dismissal and detriment failed on the basis that she had not made protected disclosures. The Tribunal's findings about the alleged disclosures would not be altered by the absence of all the photographic evidence.
- 13 The Claimant's remaining claim was a claim for ordinary unfair dismissal. Again, even if there were no photographs at all, the Tribunal's conclusions would not be likely to be altered as they depended on an assessment of the reason for the dismissal and on the procedure followed, none of which were based on the photographs.
- 14 In summary, the Claimant seeks to persuade the Tribunal that there is some question about the reliability of the timing of the photographs. The basis for this is not new information. The absence of one photo from the camera roll visible on the email is not of itself sufficient to prove a lack of authenticity in relation to the photographs. The Tribunal worked through the evidence on the timeline carefully in its judgment. However, the conclusions reached on the question of liability were not dependent on the timeline. If, despite the lack of merit in the Claimant's argument, she were to succeed in that argument, the effect would be that the photographs would not assist in determining the timeline, but the Tribunal's conclusion on the Respondent's liability would remain the same.
- 15 In the circumstances, as the outcome would not be affected, it is not in the interests of justice for the judgement to be reconsidered.

Additional points

- 16 The Claimant has made two additional points. It is not clear whether those are a part of her request for reconsideration but in order to ensure the matter is fully addressed, I have considered them. First the Claimant says that not addressing the law was due to her inexperience of Tribunal hearings, but the law had been discussed at a previous preliminary hearing before Judge Moor when two cases were mentioned.
- 17 The reference in the Judgment to the Claimant not having addressed the law

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was made simply because a Tribunal judgement is expected to summarise what legal submissions were made. It is not unusual for litigants in person not to address the law. The Tribunal set out the case law that it considered in the section headed "Law".

- 18 The Claimant refers in her letter to cases referred to at the hearing before Employment Judge Moor. The first case was Chesterton Global Limited v Nurmohamed. [2017] EWCA Civ 979. That case was considered by the Tribunal as is made clear in the Law section of the judgment. The Claimant also refers to a case of Mulwandad v Shiloz Services 3200439/2018. This is a first instance case before another Employment Tribunal and, as such, is not binding on the Tribunal. Moreover, the facts are different in that in that case it was accepted that a protected disclosure had been made.
- 19 Additionally, the Claimant refers to matters which were addressed by the Tribunal at the hearing and considered carefully, being what she alleged to be her protected disclosures and the belief that she considered they raised. These were addressed at some length in the course of the hearing and the Tribunal's findings and conclusions are explained in the judgment. The Claimant makes no other argument for the Tribunal revisiting them. The process of reconsideration does not allow for a re-opening of matters already determined.
- 20 In the circumstances the application for reconsideration is refused.

Employment Judge Walker
Date: 13 March 2023