



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Ximenes

Respondent: Manchester Airport PLC

HELD AT: Manchester

ON: 29 September 2017

BEFORE: Employment Judge Ross
Mr G Skilling
Mr P Dodd

REPRESENTATION:

Claimant: In person

Respondent: Mr L Ashwood, Solicitor

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration fails.

REASONS

1. The claimant brought an application for reconsideration of the Employment Tribunal's decision sent to the parties on 18 January 2017. The grounds of the claimant's application were:

- (1) A change to the bundle index on day one of the hearing;
- (2) An allegation that the claimant's witness statement used in the hearing on the witness table was not hers (until the last day);
- (3) An allegation that the interpreter did not translate the respondent's final submissions.

2. At the reconsideration hearing the claimant also relied on a number of other factors, including that she had a broken elbow at the time of the original hearing and so was in pain; that the respondent's witnesses had given unreliable evidence and

were not knowledgeable about her workplace; and that she had wanted to rely on photographs which she had been unable to send to the respondent at the time documents were exchanged because she did not know how to print and date photographs from her iPhone at the time. She also relies on the fact that she had malware in her computer.

The Law

3. The law in relation to reconsideration is found at rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

4. A judgment will only be reconsidered where “it is necessary in the interests of justice to do so”.

5. The interests of justice are construed narrowly. The interests have to be seen from both sides.

6. The Tribunal turns to consider each of the claimant's grounds in turn:

(1) A change to the bundle index on day one of the hearing:

(a) The Tribunal reviewed its notes of the hearing. The Tribunal is not satisfied there was a change to the bundle index on day one of the hearing. The Tribunal notes that the claimant brought additional documentation to the hearing on the first day. She was permitted to include this in the bundle and the Tribunal read and took into account that information. Accordingly the Tribunal is not satisfied there is anything with regard to ground one which means reconsideration should occur.

(2) An allegation that the claimant's witness statement used in the hearing on the witness table was not hers (until the last day):

(a) It is true that during the course of the hearing the claimant said she was concerned that the witness statement on the witness table was not the same statement as the one she intended to rely upon. The Tribunal offered her the opportunity to adduce the statement she wished to rely upon. The claimant supplied a copy. The Tribunal therefore had the benefit of both the original statement on the witness stand and a further statement supplied by the claimant. There was very little difference between the statements. At the original hearing the claimant was unable to explain how the statements differed. At the reconsideration hearing Mr Ashwood from Eversheds identified the change as only amounting to the words “not itemised” being deleted and “item 44” inserted at paragraph 33 of the claimant’s statement, and the reference to “re letter item 89” at paragraph 9 of the claimant’s statement should instead read “re item 98”.

(b) The claimant appeared also to be concerned that the attachment to her witness statement which referred to the index of the bundle was incomplete because the index attached to her statement did not include the last three documents she had disclosed.(It was not

suggested that the documents themselves were missing from the bundle)

- (c) The Tribunal is satisfied that it read and took into account both versions of the claimant's witness statement which were almost identical. The Tribunal noted that usually witnesses do not attach the index of documents from the bundle to their witness statement. Indeed some litigants in person do not refer to the page numbers in the bundle when referencing a document in their statement. Accordingly the Tribunal makes sure that where a document is referred to in a witness statement we locate it and read it in the bundle. The Tribunal is satisfied that it located and read the documents the claimant wished to refer to in her statement. Accordingly the Tribunal is not satisfied that the claimant was prejudiced in any way in relation to her witness statement or the bundle index.
- (3) An allegation that the interpreter did not translate the respondent's final submissions:
- (a) It is not disputed that the claimant speaks English as a second language. It is not disputed that an interpreter was available at the original hearing. The claimant indicated she did not wish to have an interpreter at the reconsideration hearing. The Tribunal specifically enquired whether she would prefer to have a different interpreter to the one who had appeared at the original hearing, and the claimant clarified in writing before the application for reconsideration was heard that she did not wish to have any interpreter at all at the reconsideration hearing.
 - (b) The Tribunal has checked its notes. The Tribunal is satisfied that both the claimant and the respondent provided written submissions. The Tribunal read those submissions and then gave both the claimant and Mr Ashwood for the respondent the opportunity to comment orally on the other party's submissions. The Tribunal notes that Mr Ashwood went first and made limited verbal submissions. The Tribunal notes that the claimant made verbal submissions lasting for approximately 15 minutes.
 - (c) The Tribunal is unable to comment on whether or not the interpreter failed to translate Mr Ashwood's oral submissions. The claimant did not bring this to the attention of the Tribunal at the time. The Tribunal notes that the claimant did make her own oral submission which suggests she understood what Mr Ashwood said. The Tribunal notes that the claimant requested to proceed without an interpreter at the reconsideration hearing. The Tribunal notes that the claimant is an articulate person and where she had concerns about the original hearing she was able to raise them at the time. For example, the claimant suffers from a hearing impairment and brought to the Tribunal's attention that the hearing loop was not functioning properly at the original hearing. Accordingly the Tribunal moved to a different room. On the second day of the hearing the

claimant informed the Tribunal she had not brought her hearing aid with her. In those circumstances the Tribunal permitted a postponement on the second day and the case did not proceed that day so that the claimant was not disadvantaged by proceeding when she could not hear properly.

- (d) Therefore the Tribunal is not satisfied that the claimant has suffered any prejudice in relation to this allegation. The Tribunal is satisfied that even if the interpreter failed to interpret Mr Ashwood's final submissions, the claimant understood sufficiently to participate in the submissions stage. The Tribunal is also satisfied that if there had been real concerns at the time about the failure of the interpreter to interpret Mr Ashwood's submissions the claimant was able to raise a concern. She did not do so.

7. The Tribunal turns to the other concerns raised by the claimant. The claimant did not suggest at the original hearing that she was unable to proceed because of her broken elbow. If she had done so the Tribunal would have asked her if she wished to make an application for a postponement. The Tribunal allowed the claimant regular breaks and the Tribunal did not sit on the second day of the three day hearing. The Tribunal is not satisfied that the claimant was prejudiced in relation to her broken arm.

8. The claimant alleges there was malware on her computer after the conclusion of the hearing. It is unclear how the claimant says this is relevant to her application for reconsideration.

9. The claimant wished to rely on new photographs. She said the photographs had not been produced at the original hearing because she did not know how to print and date them from her iPhone. The Tribunal reminds itself that for new evidence to be adduced it needs to be relevant and there must be a good reason why the claimant did not adduce the evidence at the original hearing. Firstly, the Tribunal is entirely unclear why the photographs supplied by the claimant taken within the respondent's Occupational Health department are relevant to the claimant's claim for disability discrimination. Secondly, the Tribunal considers that not knowing how to print photographs from an iPhone and date them is an insufficient reason not to have adduced them at the time. The claimant could have sought assistance from someone else in printing off or emailing those photographs.

10. The claimant said that the respondent's witnesses provided information that was incorrect and the Tribunal relied on that evidence. It is not sufficient for a party to come to a reconsideration hearing suggesting that a witness is mistaken; that is not a ground for reconsideration.

11. The Tribunal is satisfied that the claimant, a litigant in person with a hearing impairment speaking English as a second language, did have the opportunity to present her evidence to the Tribunal. The Tribunal took her evidence into account. The Tribunal is not satisfied it is in the interests of justice of both parties to allow the application.

Employment Judge Ross

Date 3 October 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
4 October 2017

FOR THE TRIBUNAL OFFICE