



EMPLOYMENT TRIBUNALS

Claimant: Ms B Pawlicka

Respondent: DWP Government Recruitment Service

JUDGMENT

The claimant's application dated **6 April 2022** for reconsideration of the judgment sent to the parties on **2 April 2022** is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, because the claimant applied for a reconsideration on the basis that the respondent's non-attendance at the interim relief hearing meant that she should automatically have been granted interim relief (s129(9) of the Employment Rights Act 1996). This is not correct. The power outlined at s129(9) is only used when the requirements of s129(1) Employment Rights Act 1996 are satisfied. Section 129(1) sets out the test to be applied and satisfied in the case of a claimant asking for interim relief. Only if that test is satisfied does the Tribunal go on to consider the form which any interim relief should take. Section 129(2)-(9) sets out the steps to be taken by a Tribunal deciding what type of order to make. Section 129(9) indicates that where the claimant is entitled to interim relief and the respondent does not attend the hearing, then the interim relief takes the form of an order for continuation of the contract of employment (as distinct from an order for reinstatement or re-engagement). The claimant has to be found to be entitled to interim relief under s129(1) before s129(9) comes into effect in the case.
2. The claimant has sent in some further documents after making her application for a reconsideration. The Tribunal has considered emails dated 4 April (2 emails), 7 April, 9 April (2 emails) and their attachments. In particular, she has sent a document which refers to the discussion on 16th December 2021 about whether she would be given a permanent contract. The document records, via tick box, that the claimant "would like to be considered for a permanent contract with DWP at Aldershot JCP, subject to successful completion of the Line Manager Assessment." The document does *not*

confirm that the claimant's contract was in fact made permanent during, or as a result of, that discussion on 16th December 2021.

3. The original Tribunal decision was made on the basis of the submissions made by the claimant and the documents which she presented during the course of the hearing up to and including the point where the judge announced her decision and attempted to give oral reasons for it. The Judge did not deny the claimant her "appealable rights." The judge merely gave her decision and attempted to give the reasons for it. It is now up to the claimant to decide whether she wishes to appeal.
4. The claimant has also suggested that the absence of an ET3 at the time the hearing took place means that interim relief should have been granted. The issue of the ET3 is a separate and distinct matter which has no bearing on whether interim relief should be granted. Interim relief applications may be heard and determined before the deadline for filing an ET3 has elapsed. The Tribunal administration can check when the proceedings were served on the respondent and whether the ET3 has been filed within the relevant time limit. If it has not, then consideration can be given to issuing a rule 21 judgment. That is a separate question from the granting of an interim relief order and different principles apply.
5. The decision on the application for interim relief has no bearing on the substantive claim as set out in the ET1. That claim can be determined in the usual way, on the evidence, at a full merits hearing.

Employment Judge Eeley

Date: 6 May 2022

JUDGMENT SENT TO THE PARTIES ON

26/5/2022

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FOR THE TRIBUNAL OFFICE