# EMPLOYMENT TRIBUNALS

| | | |
|---|---|---|
| **Claimants:** | **Ms J Jones**<br>**Ms N Jones** | |
| **Respondent:** | **Mitchells & Butlers Ltd** | |
| **Heard at:** | **Cardiff** | **On: 16 July 2018** |
| **Before:** | **Employment Judge P Davies** | |

**Representation:**
Claimants: In person
Respondent: Mr Kay (Solicitor)

**JUDGMENT** having been sent on 2 August 2018 from the hearing which took place on 16 July 2018

# RECONSIDERATION

This is an application made by Miss Jennifer Jones and Miss Naomi Jones for reconsideration of a Judgment that was given in October 2017. The Judgment was sent to the parties on 20 October 2017 following a hearing on 3 and 4 October 2017.

The request for reconsideration pre-dates the sending out of the reasons in this case because shortly after the Judgment was sent to the parties there was an application received from the Claimants for a preparation time order. That application concerned the period from January to 4 October and says that both Claimants had been engaged in preparation for the hearing which they claimed at 36 weeks at 2 hours per day. There is reference to seeking appointments with Citizens' Advice Bureau, numerous phone calls and emails to ACAS and Citizens' Advice Bureau for help together with online advisors.

The application for a preparation time order was objected to by the Respondents in an email of 9 November 2017. That is a matter the Tribunal will have to raise with the parties shortly.

By an email of 27 October 2017 the Claimant's asked for a reconsideration of the Judgment in the interests of justice. There was attached to the email a letter of 18 October 2016 which was a letter to Mr Samuel Coghlin the relevant bit of which says only written notice would constitute a resignation in any event and that is a letter sent by Mr Damian Griffiths on behalf of the Respondents. The email for reconsideration goes on to set out evidence given by Sarah Taylor, particularly in relation to P45 dates. The email says the timeline is such that they (the Respondents) initiated our dismissal before they had received our letters of resignation and that they believe they were unfairly dismissed and wrote to the Respondents on 6 December 2016 asking the company for reasons why they had been dismissed.

The Respondents resisted the reconsideration on various grounds set out in an email of 9 November 2017.

The Judgment with reasons was sent on 23 February 2017 this was pursuant to a request that had been made for reasons by the Claimants. On the same date the 23 February an email was received from the Claimants saying "I would like to make you aware that one of the witnesses representing the Respondent according to the physical evidence I have now gathered I believe to have committed perjury under oath. After consulting with the police they advised me to make the Tribunal aware of this fact and the concerns that I now have regarding a pending Court case with Mr Samuel Coghlin (and a case number is given) whereupon this witness will feature prominently. These details are available upon request, I would like to leave this matter for your attention." Further emails were received from the parties which include on 4 April 2018 an email from the Claimants making a request to be able to bring in disputed documents that they received permission to bring into the hearing on 3 and 4 October 2017 as "these were never fully opened up" by myself. These are details contained in the documents I would like to make you aware of just to give one example of the relevance of the documents one document shows Mr Jason Coghlin attending an investigation meeting with a representative of the company Mrs Hayley Evans on 28 October 2016 whereupon our shifts were discussed, he explained the PPS system of payment and the jobs we had done on behalf of the company without the use of a key. The company were fully aware of all the facts at this time hence the non-payment of wages becomes deliberate and unexplained."

The notice of reconsideration hearing was sent to the parties and it says there may be submitted written representations for consideration at the hearing. There were further emails and the Claimants said they were in the process of preparing written submissions, "but on closer examination as there is more than one account of untruths we are attempting to separate deliberate lies that affect the case from

misrepresentation of truth. This is taking some time. In addition to the Respondent adding to the bundle we would like to state we have not asked for new evidence to be presented by ourselves only to be able to use disputed documents that were present at the Tribunal not fully opened up, however we leave this to the Tribunal's discretion as to decide on new evidence."

The parties continued to exchange emails which had been sent to the Tribunal. Of significance is the email from the Claimants of 29 June 2018 which under the heading "perjury" names a number of witnesses who gave evidence at the hearing in October, Sarah Taylor, Sam Nichol, Damian Griffiths, Hayley Evans, Tim Thomas and then under the heading "misrepresentation of truth" it refers again to say the first time they had heard about the paying system is a lie, it corrupted the legal proceedings the company implying it did absolutely nothing to resolve the situation this is a lie. Then under the headings which are headings in other parts "what is the physical evidence" refers to investigation notes, letters then there is a section "breach of obligation of disclosure - what are the documents?" and there is reference to they were privileged documents for the use of the bundle and it was an abuse of the Court process because no-one else was allowed to see them and yet the Court bundle was used outside the permitted use. There is reference to various breaches of solicitors confidentiality and they were not raised at the hearing because Miss Jennifer Jones says in the email "I was not fully aware of the legal implications at the time of the last hearing and so did not think to raise it. I am a lay person as such cannot be expected to know the relevance at that stage but now I have consulted a legal source I want to now raise it."

This email was followed on the 9 July by a document from the Claimants for reconsideration hearing we would like to make the following submissions, (1) the Tribunal was presented with false information because of perjury (2) the Tribunal was not presented with all the information and as the Tribunal was presented with false information the wrong conclusion was drawn in the Judgment", and then there is a reiteration of matters which have been set out previously.

The Respondents have made submissions which were received on 12 July and the submissions are set out under the various headings used by the Claimants the responses to the submissions. This is a lengthy document because it incorporates the submissions of the Claimants, it is some 90 pages long. It is not my intention to repeat fully the matters which are set out there or indeed fully in respect of all the documents which have been referred to.

The submissions from both the Claimants can be summarised as this: That they feel aggrieved at the decision that was given in October 2017, the evidence is not new evidence as such because it existed at the time but it was not put before the Tribunal. That Mr Coghlin had explained the process regarding payments of monies and that, for example, when submissions were made on behalf of the Respondents that witnesses heard of this for the first time that was not right. That Mr Coghlin was accused of fraud and that as a result of that in the minds of the

Respondents the wages were deliberately withheld from the Claimants. There is criticism made of various witnesses such as Mr Nichol not being interested and that their points in cross examination were failed to be brought out because Miss Jennifer Jones says she was out of her depth, that she was frightened and that she did attempt to make the points but was confronted with lies and found it difficult in the circumstances to fully put the case. There is further reference to how the allegation of fraud against Mr Coghlin was then dropped and changed after the Claimants had left employment to not keeping proper records. The submissions regarding perjury by various witnesses were repeated with particular emphasis upon the date of dismissal or resignation and what people did or said in relation to the events around the time of November 2016 and that as a result of this they had suffered a detriment. Miss Naomi Jones emphasised how Mr Thomas had lied and that reference was made to another employee Stacey Davies who had got paid in October but she was in the same position not keeping proper records and that there was discrimination as a result of the way that the Claimants had been treated because there was deliberate withholding of monies from the Claimants and there was an excuse not to pay them that was being used by the Respondents. There was also reference to documents which had been put in by the Claimants which had been given to them by Mr Coghlin in respect of proceedings that he was involved in, which included investigatory meeting, these were documents which had been provided in a second occasion of disclosure of documents in July 2017 by the Claimants but what had happened is that in Mr Coghlin's proceedings an additional allegation had been made about Mr Coghlin improperly disclosing documents to the Claimants, but it is the case that at the hearing these documents were before the Tribunal and put in by the Claimants without any objection by the Respondents.

The Respondents in the main reiterate what is in their written submissions. They emphasise that the information was available at the time of the hearing and that there is no new evidence as such. What the Claimants are seeking is a re-hearing because they were not happy with the result. As far as Mr Coghlin's case is concerned reference is made to the fact that Mr Jason Coghlin, Miss Hannah Coghlin and Mr Samuel Coghlin each have their own Employment Tribunal proceedings which have not yet been heard and determined and that it is clear from the way that this application for reconsideration has been made by the Claimants that what they are attempting to do is to discredit all the witnesses for the Respondents by saying that they have lied and wanting findings of perjury against them with an eye on these other proceedings which are due to sometime be determined by the Tribunal. That is what is behind the way that the application for reconsideration has developed to the present time and reference is made to the fact that their matters could and should have been put to various witnesses.

The starting point for the Tribunal for reconsideration of Judgments are rules 70 – 72 of the Employment Tribunal Constitutional Rules of Procedure Regulations 2013. Rule 70 says the Tribunal may on either its own initiative or on the application of a party to 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. Although the test now is as widely drawn as already indicated in rule 70 reference is sometimes made to the earlier Tribunal rules which laid out specific grounds upon which the Tribunal could reconsider its Judgment, the old rule 34 of the Tribunal Rules 2004 where there were certain specific grounds which included the interests of justice. What is sometimes said and is important to bear in mind is that there is an underlying public policy principle in all proceedings of a judicial nature there should be finality in litigation. Reconsiderations are seen as limited exceptions to the general rule that Employment Tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry. In ***Stevenson -v- Golden Wonder Limited*** **[1977]** Lord McDonald said of the old review provisions that they were not intended to provide parties with the opportunity of a rehearing at which the same evidence can be reheard with different emphasis or further evidence adduced which was available before. The old review procedures and the case law under that are not irrelevant. It does not mean that in every case where a litigant is unsuccessful he or she is automatically entitled to a reconsideration. Virtually every unsuccessful litigant thinks that the interests of justice require the decided outcome to be reconsidered, the ground only applies where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order and that was said in the case of ***Ford -v- Black*** by the Employment Appeal Tribunal.

A careful analysis of what is put forward on behalf of the Claimants and their grounds show that in reality what the Claimants are seeking is to overturn the findings of fact that were made at the hearing in October because they disagree with those findings. The evidence that is sought to be put in such as the letter from Mr Griffiths, is something which was the subject of some considerable submission and cross examination mainly the attitude of the Respondents to resignation, whether verbal or in writing, and today has been produced as it was on the previous occasion a letter written in November to not the Claimants but to the Claimants nephew regarding the wish to have written resignation. All these matters were considered by the Tribunal on the last occasion in October and there is nothing that is significant in relation to anything put in now. Indeed, the Claimants do not contend that they did not have the material there. What they say is that they were lay people and that in the circumstances were failed to bring out the points as well as they wanted to. Reference has already been made to the application for a preparation time order which indicates that for some considerable time a huge amount of effort was done by the Claimants in preparing for the hearing and the fact that they considered documents to be relevant is evidenced by the fact that in July 2017 after the initial period of disclosure there were further documents put in and the fact that Miss Jennifer Jones is conducting and assisting her nephew in relation to his litigation as referred to in the email sent to the Tribunal. The submission today by Miss Jones indicates a very astute, very involved and a very considered approach to this litigation. This is not a case where it can be said there

was any lack of preparation and consideration of the issues in the case. I accept the submissions made on behalf of the Respondents that an analysis of the points made regarding perjury and other matters are really disagreements with the findings of fact made by the Tribunal about what was in the mind of various witnesses, particularly the Respondents, and why they acted as they did. An analysis of the points made on behalf of the Claimants reveal there are no grounds for a reconsideration of the Judgment regarding the unfair dismissal. It falls very firmly in that type of category where an unsuccessful litigant thinks the interests of justice required the decided outcome to be reconsidered, but this is not something in which there has been a denial of natural justice. This was a hearing that took 2 days, the Claimants were able to and did cross examine witnesses, they were able and did put their points of emphasis regarding the reliability, the credibility of witnesses and why the matters should not be accepted on the part of the Respondents. The findings of fact in part by the Tribunal accepted the evidence of the Claimants on some points, the evidence of the Respondents was accepted on other points and a decision was based on those findings as referred to in the various paragraphs which are set out in the Judgment. Therefore, the conclusion is that the application for reconsideration is refused. It is not in the interests of justice for the matter to be reconsidered.

The Tribunal is dealing with an application made for a preparation time order. It was an application that was made shortly after the Judgment had been given in the case and has already been referred to. It had the names of Jennifer and Naomi Jones, but Miss Naomi Jones says that she is not pursuing this application for a preparation time order. The application states that they received case management orders which ran from March until May which included lists of documents to witness statements, we did this with great difficulty as we did not have a bundle, we had to keep corresponding with regards to the bundle, we were then given notice that on 1 June we were to have a Preliminary Telephone Hearing as the Respondent had made an application for more time. After the Preliminary Telephone Hearing we received new case management orders which ran from June to September, during this time we did not have a bundle and the day before the Court hearing after just receiving the bundle the Tribunal advised me to ask the Respondent to index my witness statements which had been sent not indexed, however in an email to myself Mr Kay refused. My sister and I stayed up most of the night trying to index the witness statements but could not finish them in time. We had to prepare to cross examine six witnesses." Then there is a reference to the one to three hours a day from January to October making 36 weeks at 2 hours a day and that is the time they actually spent on the case.

The starting point in relation to the Tribunal making a costs or preparation time order is rule 76 a Tribunal may make a costs or preparation time order and shall consider whether to do so where it considers that a party or that party's representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings or the way that the proceedings

or part have been conducted and then there are other provisions which are not relevant.

In order to consider whether to exercise a discretion the Tribunal has to be satisfied that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably and that is said to be in the way that the Respondents had dealt with the Claimants in relation to the preparation of the bundle. I have read the email which was sent in response to this application and heard submissions today about this. It is accepted that on 24 April 2017 after documents had been received that the Respondents would post the bundle and on 28 April 2017 the Claimants were sent the paginated and indexed bundle by post and thereafter there had been considerable exchanges which as the Claimants said involved there being a Preliminary Hearing for case management because of difficulties that the parties were having in relation to the bundle and the index in the bundle and what should be in the bundle, until ultimately a second hard copy bundle was sent by the Respondents to the Claimants on 26 September and that included documents which had been disclosed in a further period of disclosure by the Claimants in July 2017.

Having heard the submissions by the Claimants there are no grounds whatsoever to consider that the Tribunal can find the Respondents acted in a way which triggers the discretion of the Tribunal to award preparation time orders. I have no hesitation in rejecting this claim for preparation time orders, there is no basis for this application to succeed and it is therefore dismissed.

_____

Employment Judge P Davies
Dated: 14 September 2018

REASONS SENT TO THE PARTIES ON

9 October 2018

.....
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS