



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr K Sidapara

Metroline Limited

JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made on 26 July 2018 to reconsider the preliminary hearing judgment sent to the parties on 28 June 2018 2018 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application to reconsider is refused as there is no reasonable prospect of the judgment being varied or revoked.

REASONS

Introduction

1. By a claim form presented on 1 October 2016 the claimant presented claims of disability discrimination and unlawful deduction of wages. As recorded in the reserved preliminary hearing judgment after the preliminary hearing on 9 May 2018, there had been four preliminary hearings before the one in May 2018. I also recorded there what efforts had been made to agree what the complaints were and what preliminary issues might arise.
2. In the reserved judgment sent to the parties on 28 June 2018, I dismissed the claims because I found they had no reasonable prospect of success. That reserved judgment was 18 pages long and the claimant asked for an extension of time to apply for reconsideration which was granted.
3. The application of 26 July 2018 is contained within a 15 page document which I now attempt to summarise. The claimant sets out some background and, under a heading "The complaints and the Respondents Responses", avers that there are inaccuracies in the judgment. It is not

clear on a reading of the next five pages where the alleged "inaccuracies" are said to have appeared in the judgment. Rather, this section appears to be largely a re-statement of the arguments which were before me at the preliminary hearing. The application then has a heading "Application to amend" but does not appear to say that there is any suggested reconsideration of that application to amend which was allowed in part. Under the next heading "Facts – Inaccuracies which lead to the incorrect determination", there are 8 numbered paragraphs. However, reading those paragraphs carefully, I cannot find a clear reference to any factual inaccuracies in the preliminary hearing judgment but rather a number of concerns about the findings made on the facts.

4. In the final section "Submissions on the law", the claimant repeats rules 37 and 39 Employment Tribunal Rules of Procedure 2013 and then raises several reasons for reconsideration. It is said that insufficient consideration was given as to whether to order a deposit rather than strike out and that the decision to strike out was premature and without hearing all the evidence. The reconsideration application refers to several cases including Anyanwu v South Bank Students Union [2001] IRLR 391 and Ezsias v North Glamorgan NHS Trust [2007] IRLR 305 which are cases that were considered and are referred to in the judgment. He also refers to ABN Amro v Hogben (UKEAT/0255/09), Timbo v Greenwich Council for Racial Equality (UKEAT/0160/12) and Javed v Blackpool Teaching Hospitals NHS Foundation Trust (UKEAT/0135/17), all of which give guidance on when it might or might not be appropriate to strike out claims or parts of claims.
5. By email of 6 August 2018 the respondent submitted that the reconsideration application should be refused. In summary, the respondent states that all the allegations of discrimination were considered at the preliminary hearing on the assumption that the claimant would meet the definition of being disabled (even though that is not conceded by the respondent). It is submitted that the application is largely the claimant's interpretation of undisputed incidents. The respondent reminds me that the claimant had two opportunities to make submissions on strike out or deposit and they were made in writing and at the preliminary hearing. Although the respondent agrees that the power to strike out should be exercised with caution, it is submitted that is what happened in this case.

Rules

6. The relevant employment tribunal rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. 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

71. 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

72.—(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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(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; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

7. In essence, my task is to consider whether reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

8. This matter was heard over a full day with judgment reserved so I could give it full consideration. It was a relatively complex matter because of the number of allegations raised and the many documents prepared, primarily by the claimant. I had written applications and both parties had time to make submissions having already handed in detailed representations. Both parties had legal representation.
9. The application for reconsideration repeats some of the documentary evidence that I looked at. The application attempts to re-argue that which I have already considered and decided. There is no clear reason given as to why it would be in the interests of justice to reconsider.
10. The claimant is, not surprisingly, dissatisfied with the outcome but the undisputed facts and the allegations of discrimination were fully explored and the legal tests applied. The hearing was the claimant's opportunity to give information, asks questions and raise issues. There is nothing in what is now said which indicates that it is in the interests of justice to re-open matters. I must refuse this application as there is no reasonable prospect of the judgment being varied or revoked.

Dated: 05.09.18

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Employment Judge Manley
South East Region

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Judgment sent to the parties on

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For Secretary of the Tribunals