



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A McMellon

**Respondent:** Royal Mail Group Limited

## JUDGMENT

The claimant's application dated 22 May 2020 for reconsideration of the judgment sent to the parties on 7 May 2020 is refused.

## REASONS

1. This application for reconsideration was received more than 14 days after the judgement and written reasons was sent to the parties. However, having considered the reasons given by the claimant, I considered that it is in the interests of justice for me to extend time to consider the application.
2. Having determined that the application for consideration will be allowed to proceed past this first hurdle, I considered the claimant's application under rule 72 of the Employment Tribunal Rules of Procedure, also taking into account written representations made by him in a series of emails to the tribunal, and the written representations of the respondent. Based on those representations, the application for reconsideration is refused because there is no reasonable prospect of the original decision being varied or revoked.
3. My reasons for reaching that conclusion are as follows:
  - a. In his application for reconsideration the claimant asserts, in essence, that I got the balance of justice and equity wrong when I determined that his claim of disability discrimination could not proceed because I found that he had not brought his claim within the statutory three month time limit, adjusted to take account of early conciliation, or within such other period as the employment tribunal thinks is just and equitable (section 123 (1) Equality Act 2010).
  - b. It is not surprising that the claimant thinks I got this balancing exercise wrong. However, I am satisfied that I applied the correct legal tests. In my reasons for my judgment I sought to explain that I had taken into account a number of different factors in determining whether it was just and equitable to extend time to enable the claimant to bring his claim. The approach I adopted was also consistent with the guidance of the Court of Appeal, in the case of

*Robertson v Bexley Community Centre t/a Leisure Link* 2003 IRLR 434, CA which to paraphrase slightly, means I should not presume that I should exercise my discretion unless I can justify a failure not to do so. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. The claimant here did not convince me that his is a case where it was just and equitable to exercise my exercise to the extent required to allow his claim to proceed.

- c. In this case I had to balance the obvious potential prejudice to the claimant of not extending time, against prejudice to the respondent if I allowed a claim to proceed which was brought quite significantly out of time. The claimant's claim was not brought late by a matter of days or even weeks. The claimant's claim was not brought until several months after it should have been presented to the tribunal. In my written reasons I explained that I had some sympathy with the claimant whose failure to act seems to have been caused, at least in part, by unhelpful advice from his trade union. However, on the basis of the evidence of the claimant at the hearing, I concluded that even taking into account his flawed understanding of the law, he had not acted promptly when the respondent made clear that it would not consider his appeal. That delay on his part only made the potential prejudice to the respondent more significant for the reasons I set out in my reasons, and that prejudice tipped the balance against the claimant.
- d. The claimant in his application for reconsideration does not suggest that my approach to his case was wrong in law. Simply put, it is that he does not like my conclusion. The claimant also seeks to offer additional evidence in relation to his failure to act more promptly. This is not evidence which has come to light showing some significant new fact. It is simply more evidence that the claimant has gathered that could have been offered to the time of the open preliminary hearing. Claimants cannot expect to have the right to keep coming back to an employment tribunal with more and more information if they do not like the conclusions which are reached on the basis of the evidence presented on the day of a hearing. There is a clear public interest in the finality of litigation. I reached a decision in the claimant's case based on the information which was before me on the day. Cases like this one often involve a fine balance which will leave one party disappointed and, perhaps inevitably, wishing that they had said a little more or offered a little more evidence. However, that is not a reason to allow an application for reconsideration to proceed.
- e. I do not consider that an appeal against my decision in this case has a reasonable prospect of success and there is no other compelling reason why the application should be heard.

Employment Judge Cookson  
15 June 2020