



EMPLOYMENT TRIBUNALS

Claimant
Mr P Tarvin

v

Respondent
Ministry of Defence

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

1. The application for reconsideration is refused as having no reasonable prospect of success.

REASONS

1. On 4 January 2017 I found that there was no jurisdiction to pursue a claim of unfair dismissal as the claim had been presented outside the prescribed time scale in circumstances when it was reasonably practicable to have done so.
2. By email dated 31 January 2017 the claimant seeks a reconsideration of the judgment.
3. The application is set out in a 14 page document, going through in detail every line of the judgment. When broken down into its component elements, the application covers:-
 - i) I wrongly allowed the respondents to rely a document - a skeleton argument. This had not been served on the claimant in accordance with the Tribunal's order for disclosure.
 - ii) I was wrong to consider that the Mrs Tarvin was fully instructed by the claimant; that the claimant was aware of what Mrs Tarvin wrote on his behalf; that the claimant was in a fit state to give instruction to Mrs Tarvin; that Mrs Tarvin understood the meaning of references to ACAS guidelines or constructive dismissal.

- iii) I should have taken into account the stress impact of the claimant's issues with the respondent as regards the health of both the claimant and his wife.
 - iv) I was wrong to make reference to the delay arising from waiting for the outstanding appeal process to be concluded.
 - v) I failed to refer in specific terms to the claimant's statement or Mrs Tarvin's statement.
 - vi) I was wrong to make judgment about the claimant's state of health, given his doctor's diagnosis.
4. The purpose of a reconsideration is not to give the opportunity for a party to have another bite at the cherry and put their case in a different or more persuasive way. I must consider whether it would be in the interests of justice to vary or revoke my finding (r.70 Employment Tribunal (Procedure) Regulations 2013. Was there an error in what I concluded on the facts or in law which requires action now?
5. Has the claimant any reasonable prospect of persuading me that I should vary or revoke my judgment. If there such a prospect, I must refer the matter for a hearing to allow the respondent to reply. If I consider there is no such prospect, I can dismiss the application at this stage (r.72(1)).
6. In order to address the points raised by the claimant in his application I have looked at my notes of his evidence; looked at the witness statements given to me and re- read my judgment.
7. I do not consider that the application has any reasonable prospect of succeeding and I refuse it for the following reasons. I use the number set out in para. 3 above.
- (i) A skeleton argument is not a document for disclosure; it is a summary of how a party wishes to put their case, set out in a clear written format, allowing the parties and the Judge to follow the argument more easily, rather than relying on oral submissions only. The claimant's submission in objecting to a skeleton argument is misconceived.
 - (ii) The claimant in his oral evidence made it clear that he knew claims could be brought in the Employment Tribunal; he was not aware of ACAS guidelines, but his wife was, and that on his behalf she pursued the internal appeal. He accepted that his wife could have googled ACAS to find out the time limits.

At no point in the evidence before me was it suggested that Mrs Tarvin used terminology without being aware of its meaning, e.g. ACAS guidelines/ constructive dismissal.

He stated specifically that he explained his concerns to his wife who then wrote the letters and lengthy submissions received by the respondent. He signed them. There was no suggestion put forward at the hearing that he was unaware of the content of the letters and submissions or that Mrs Tarvin was acting on her own initiative, without input from the claimant.

- (iii) It was not suggested at the hearing that Mrs Tarvin's stress problems adversely affected her ability to act on the instructions of her husband in pursuing his internal appeal. It was not suggested at the hearing that the claimant was too unwell to give instruction to his wife regarding his appeal as now put forward in the reconsideration application.
 - (iv) The delay in making the ET claim was described by the claimant in his witness statement/submission as follows:- *I could not submit my claim earlier because I was awaiting the outcome of the MOD's internal appeal.* The claimant now says I was wrong to rely on that statement as when he did submit his ET1 it was before the process had concluded. However, as the italicised sentence above is his opening statement it is not unreasonable to consider that it is one of his strongest arguments. I believed his evidence that that was the reason for the delay.
 - (v) In the judgment I did not refer in terms to the content of the 2 statements given on behalf of the claimant. I described in the judgment the evidence I heard, taking into account what was contained in the witness statement of the claimant and his wife, i.e. a summary of the whole evidence.
 - (vi) My role in considering the issue of whether there is jurisdiction to consider the claim is to make judgments; that includes a judgment on whether a person is fit enough to pursue a claim.
8. I find that the reconsideration application contains a number of assertions that simply do not tally with what occurred at the hearing and do not reflect what evidence I heard. For example: the reconsideration application now seeks to put a different slant on the information presented to me, denying that the claimant was in a fit state to give instructions to his wife, who apparently acted on her own initiative. That was not the evidence before me. The reconsideration application seeks to put forward a different argument from the one put to me orally.
9. I note that within the reconsideration application the claimant makes reference to a number of authorities on which he relies in which leave has been given for a claim to proceed albeit presented outside the prescribed time scale. Nothing in those cases is on all fours in this case where the evidence before me showed that the claimant had tasked his wife to be the

person who wrote the letters to pursue his internal appeal actively on his behalf; that the claimant gave her full instructions according to his own oral evidence; the documentary evidence shows that the internal appeal was pursued fully and in detail.

10. There is no reasonable prospect of the claimant showing that it is in the interests of justice to revoke my decision that the claim was presented outside the prescribed period when it was reasonably practicable to have done so. The evidence presented at the hearing was that he pursued his internal appeal, using his wife to write the letters and supporting documentation, based on his instructions; he could have brought his claim at the same time. It is too late now to try to change that evidence.
11. It would not be in the interests of justice to re-open the jurisdiction issue. The reconsideration application has no reasonable prospect of success.

Employment Judge J Hill

Date: 28 February 2017

Judgment and Reason

Sent to the parties on: 9 March 2017

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For the Tribunal Office