EMPLOYMENT TRIBUNALS

Claimant: Mrs F Hassanzadeh

Respondents: 1. City of Bradford MDC
2. The Governing Body of Belle Vue Boy's School

HELD AT: Manchester **ON:** 3 July 2017

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Mr R Shojaee, Husband
Respondents: Mr S Gallagher, Solicitor

JUDGMENT ON RECONSIDERATION

The judgment sent to the parties on 29 June 2017 is confirmed.

REASONS

Introduction

1. This is the claimant's application for reconsideration of the judgment sent to the parties on 29 June 2017. The judgment was announced orally with reasons at a preliminary hearing on 19 June 2017. I decided that the tribunal had no jurisdiction to consider the claimant's complaint of race discrimination as the entire complaint had been presented after the expiry of the statutory time limit. The claimant asks me to revoke that judgment.

Relevant law

2. Rules 70, 71 and 72 of the Employment Tribunal Rules of Procedure 2013 govern reconsideration of judgments. They provide, relevantly:

   70 Principles

   A Tribunal may … 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… or revoked…

   71 Application

> Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing … and shall set out why reconsideration of the original decision is necessary.
>
> 72 Process
>
> (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 … 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…
>
> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless [irrelevant]
>
> …

3. Rule 6 provides that a failure to comply with any provision of the Rules (apart from some irrelevant exceptions) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include (by paragraph (a)) waiving or varying the requirement.

Can the judgment be reconsidered today?

4. I canvassed with the parties whether there was any impediment in the Rules to me conducting a reconsideration hearing today. It is the agreed position of both parties that at today's hearing I am in a position lawfully to make a decision as to whether to revoke the judgment. Both parties agree that no further procedural step is required. They have come to that mutual understanding via two different routes:

    4.1. The claimant's case is that rule 70 enables a Tribunal, where an application for reconsideration is made at a hearing, simply to make a decision on reconsideration without preliminary consideration or a notice being sent to any other party.

    4.2. The respondents are of the view that I must give preliminary consideration to the application, and unless I decide that there is no reasonable prospect of the original decision being varied or revoked, I must then hold a reconsideration hearing. Rule 72(1) provides that a notice must be sent to the other parties. The respondents, however, consent to my dis-applying these requirements under the provisions of rule 6(a).

5. I favour the second analysis. Either way, the parties are agreed that I can make the decision now without anything more having to be done.

Grounds for reconsideration

6. The claimant's application was initially set out in an email dated 3 July 2017 which I have marked "C1". The grounds set out in that application were twofold. Ground 1 was that there had been intentional collaboration between me and the respondent's legal representatives to delay the final hearing amounting to misconduct in public office. Ground 2 was that the decision was perverse.

7. In his oral submissions today, Mr Shojaee expanded on Ground 2. Essentially his argument is that I acted perversely by failing to take into account a relevant

consideration that he had been urging upon me at the last preliminary hearing. That consideration was that there had been a continuing omission to conduct a stress risk assessment from September 2012 until the date on which the claim was presented. He developed his argument by saying that there was a reference in Attachment 2 to the stress risk assessment, and that that should have been interpreted as including a reference to the causes of stress, one of which was alleged race discrimination.

8. What I have to do is decide whether in the light of those grounds it is necessary in the interests of justice to revoke or vary the original judgment. I will deal with each ground in turn.

Conclusions

Ground 1

9. It is not in the interests of justice to revoke the judgment on the ground of perceived misconduct in public office. I did not intentionally collaborate with the respondent's legal representatives. That is a serious accusation and is not supported by any evidence. If the claimant wants to pursue it then he has other legal avenues open to him, but a reconsideration application in front of me is not one of them.

Ground 2

10. I do not agree that my original decision was perverse. I did take into account the allegation of a continuing omission to conduct a stress risk assessment.

11. These written reasons are to be accompanied by the written reasons for the original decision. Readers of those reasons will see that I took into account the claimant's contention that there was a continuing omission.

12. At the time I confirmed the judgment on reconsideration, I had not finalised the written reasons for that judgment. I therefore quoted from the typed transcript of the oral reasons I gave on 19 June 2017. The purpose was to demonstrate that, even in my oral reasons, I had given full weight to the "continuing omission" argument. The passages I quoted were as follows:

    12.1. "The claim form does assert that the stress risk assessment should have investigated "incidence" (which I took the claimant to mean "incidents") of race discrimination, and that, had it been done properly, that investigation would have revealed that acts of discrimination had taken place. That is not the same as saying that the failure to carry out a risk assessment was an act of discrimination." This was a quote from Attachment 2, which was the document on which the claimant relied to show that he had alleged a continuing omission.

    12.2. The second passage was a list of assumptions that I would make for the purpose of the preliminary hearing. This was because I was aware of the test for deciding time limit questions in discrimination cases at a preliminary hearing and the requirement to take the claimant's case at its highest. "I assume that for the purpose of this hearing the claimant will establish that the policy required the respondent to carry out a stress risk assessment. Second, that the policy required that to be done as a continuing obligation right the way until the end of the claimant's employment." I had, therefore, assumed in the claimant's favour that she could establish a continuing omission lasting beyond September 2012 until the date of presentation of the claim.

12.3. The next passage was part of my reasoning for an alternative conclusion in the event that my primary conclusion was held to be wrong. “If I am wrong in my principal conclusion, this is how I would reason my decision. I suppose for a moment that the correct analysis is that the claim form could properly be understood as bringing a claim that the failure to conduct a stress risk assessment was discriminatory. In that case I would reach a slightly different conclusion. I would hold that it is at least reasonably arguable that that particular allegation was brought within the time limit. It is reasonably arguable that there was an ongoing failure to conduct a stress risk assessment which lasted until the end of the claimant's employment.”

13. For those reasons I do not think that I failed to take into account the consideration urged upon me by Mr Shojaee today. I do not agree that my decision was perverse and I therefore do not consider it in the interests of justice to revoke the judgment on that ground either.

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Employment Judge Horne

4 July 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

6 July 2017

FOR THE TRIBUNAL OFFICE