



EMPLOYMENT TRIBUNALS

Claimant: Mrs T. Kandeepan

Respondents: (1) Mr A Rashied, trading as Rush Forecourt Services
(2) Parkways Management Consultants Ltd

London Central

date 25 August 2017

Employment Judge Goodman

RULE 72 CONSIDERATION OF APPLICATION TO RECONSIDER

1. The first respondent has applied by letter of 23 July 2017 for reconsideration of the judgement sent to the parties on 13 July 2017.

Reconsideration - Relevant Law

2. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal “may reconsider any judgment where it is necessary in the interest of justice to do so”, and upon reconsideration the decision may be confirmed varied or revoked.
3. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.
4. Under the 2004 rules prescribed grounds were set out, plus a generic “interests of justice” provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive

notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in [Outasight VB Ltd v Brown UKEAT/0253/14/LA](#) that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

Summary of Proceedings to Date

5. in June 2016 the claimant presented the claim that she had been dismissed by the (first) respondent by being prevented from returning to work following maternity leave. She was due back on 1 February but the respondent did not respond to questions about her return and on 22 February telephoned to say her employment was at an end.
6. The respondent did not respond to the Tribunal claim, other than to send a brief letter saying that the business had been taken over by Parkways Management Consultants Ltd in *March* (emphasis added), and queries relating to TUPE regulations were to be sent to them.
7. The respondent did not attend the hearing of the matter on 22 November 2016. After hearing from the claimant, judgment was given the respondent had dismissed the claimant for taking maternity leave, which was discriminatory and unfair, that he had dismissed without notice, and that he had made unlawful deductions from wages by failing to pay maternity pay. The sums owed amounted to £4805.32. 25% object was made for failing to follow the ACAS code. The total came to £6,006.65.
8. The judgement was sent to the parties on 24 November 2016. On 9 December the respondent emailed the Tribunal saying that he had been unable to attend as he was undergoing medical treatment.
9. There was a reconsideration hearing on 22 March 2017 which the respondent did attend. The earlier judgement was set aside. The claim was relisted for hearing on 26 and 27 July 2017. The 2nd respondent was joined. The time of both respondents to respond to the claim was extended. Case management orders were made, which included disclosure of documents by all parties by 12 May 2017, and exchange of witness statements on 2 June 2017. The case management note records reasons for scepticism about the respondent's ill health claim and the authenticity of letters he produced.
10. On 5 June the claimant wrote to the tribunal complaining that neither respondent had responded to the claim, and that although she had set a witness statement, neither respondent had disclosed documents or sent their witness statements. (I pause to note that the first respondent responded on 10 April 2017 and the second respondent on 22 May 2017, although the latter document was not referred to any judge; the administration say both responses were sent to the claimant on 11 or 22 May). The Tribunal then wrote to the respondent on 12 June saying that it was considering striking out the responses to the claim for failing to comply with the orders to send documents and witness statements.

11. On 19 June the first respondent wrote saying that he had not been able to comply “due to an acute increase in the tremors of my right hand increasing to a level whereby I could not write or type”. He added that he had sent a bundle of documents to the claimant’s solicitors but the courier was unable to deliver because the entrance was blocked and there was a stray dog. He added that he had a neurology outpatient appointment on 16 August. He did not enclose documents and witness statements.
12. The claimant then complained there was no medical evidence to support the claim that health prevented compliance, that he had not asked to extend the deadline, and there was no reason why the courier was unable to deliver (enclosing a photographs of the premises), and that it was untrue that the claimant had not made contact with the respondent after he refused to allow her to return to work, because ACAS confirmed they had spoken to him on 25th of April 2016 when he said he would call back but did not. They had had an email purporting to come from the second respondent but they believed it came from first respondent.
13. On 3 July 2017 the tribunal struck out the response of the first respondent and reinstated the judgement of 24 November 2016. The core reason was the failure to comply with case management orders. Proceedings against the 2nd respondent were dismissed. This is the judgement first respondent seeks to set aside.

The application to reconsider

14. The first respondent states in the email of 23 July that the judgement was made without taking into consideration “my health condition at the time. The tremor of my right hand had increased and for few days I was lying motionless. Please see all documents enclosed, there are plenty other documents but I am trying to find.”
15. Enclosed were some documents he said he had sent to the claimant but been returned in the post, a sale and purchase agreement of the business to Parkways Management Consultants Ltd dated 1 February 2016, some letters from Imperial College Healthcare NHS trust, and a letter from his landlord. There was also a letter from the second respondent to the first respondent saying that his employment contract will be posted in due course, but no employment contract.
16. The purchase of business agreement says that completion is to take place on 1 February 2016. However, an addition made in capital letters and numbered 24 d. states: “time limit of 6 weeks to change any or exit from the deal, however if there is agreement on both sides this will be binding date being 01/02/2016”. This casts doubt on whether completion did take place on 1 February, especially as the respondent’s initial letter to the tribunal said the transfer occurred in March.
17. There are other additions to the agreement, which unlike the main text of the document are in in block capitals and non-legal language. Paragraph 12 u. says “under TUPE all staff and their existing amounts and pending issues specifically as regards one staff on maternity leave and her amounts of liability of the purchaser as per agreement”. 18 G

states that Mr Rashid (first respondent) will be on payroll to 31 March 2017. Paragraph 37 contains another addition, that: “all current staff have to be taken over by the purchaser, also the ongoing issues with the female staff on maternity leave will be the sole responsibility of the purchasing company”. I comment that it is possible that these changes did not appear in any original agreement.

18. In the original text there are relevant indemnities. The seller will indemnify the purchaser against claims originating or relating to the employment of any of the employees up to and including the completion date, and the purchaser indemnifies the seller against any claim relating to the employment of any employee the period of employment starting after the completion date.
19. The hospital letters consist of neurology outpatient appointment notifications for 5 July 2017, 16 August 2017 and 27 December 2017. There is also an invitation for a brain scan on 11 August 2017. There is nothing listing symptoms or a tentative diagnosis. There is a letter from Mr Saleem Mamdani dated 21 July 2017 saying that Mr Rashid has been resident with him for some months, that he is “sometimes overtly confident and yet at other times listless and depressed” and over the past 3 days he has lain in bed without much energy. He adds that he thinks about Parkinson’s disease, and Mr Mamdani has “tried to explain him that it would be wise not to take that view. I am glad that his job has kept him alert at other times”.
20. There are no documents about contact with the claimant about her employment, or contact with the 2nd respondent about this. There is a no witness statement.

Prospects of Successful Reconsideration

21. I conclude with regret that the first respondent is not prepared to engage frankly with the claim or the orders made to bring it to a hearing and there is no real prospect of it being reconsidered and allowed to continue.
22. Despite being struck out for failing to disclose documents or orders, he has not produced a witness statement, though it is nearly three months since the date he was to do so, and he has disclosed only a few documents, and not even those he showed the Tribunal at the March hearing, and only after judgment, even though at the hearing in March it was made plain what he had to do, and that he had two months in which to do it, even after a warning that the Tribunal was considering a strike out.
23. The documents he has produced are silent as to the claimant’s position. The sale agreement itself is unclear as to the date of sale, and whether it was before or after he called the claimant to say her employment was over. There are additions to the agreement, referring to the claimant, which are at odds with the legal drafting of the rest of the signed agreement. The first respondent did not sign the agreement.

24. There is no correspondence with Parkways about the sale or about TUPE, relevant to any dispute about the date of transfer. The claimant herself never had contact from Parkways and there is no evidence the transfer occurred before her employment ended.
25. If the business did transfer to Parkways, their lack of engagement is odd when the first respondent continues to work for them at the premises. The agreement shows the respondent has indemnities from the purchaser.
26. The respondent has on several occasions referred to ill health. However he has never produced evidence of the diagnosis, despite being ordered to do so for the reconsideration hearing, and as he explained at the March hearing, if he was prescribed medication by his GP, he had decided not to take it. The letters he produces now shows he is being investigated, but not what the symptoms are, and the landlord's letter indicates he has ups and downs, but nothing sustained over more than three days. He has been able to attend a hearing and write letters when a judgment against him is issued or threatened. Whatever health problems he has are not shown as so severe that he cannot comply with orders.
27. If the judgement is set aside again, there must be a real risk that there will be no full disclosure and no witness statements filed - none have been filed in the month since the application was made. The hearing may again have to postponed.
28. It is now 18 months since the claimant was dismissed and 14 months since she presented a claim. She is entitled to a determination of the claim in a reasonable time. The only reason why this has not happened - or may not happen if the judgment is set aside - is because the respondent has failed to engage. The respondent has had opportunities to present his defence for determination, but his actions have not clarified the issues and by now suggest that he seeks only to prevaricate and postpone determination.
29. The application to reconsider is refused because it has no reasonable prospect of success.

Employment Judge Goodman
25 August 2017