



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mrs L Smith

Herefordshire Council

HELD AT Birmingham

ON

1st November 2017

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: Parties not in attendance

For the respondent: Parties not in attendance

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for a reconsideration of the Tribunal's judgment dated 17th July 2017 has no reasonable prospects of success and is refused.

REASONS

Background

1. The claimant brought a claim for unfair dismissal and breach of contract following her resignation on 14th September 2016.
2. A full merits hearing took place on 20th and 21st August 2017 with judgment being reserved.

3. By a judgment dated 17th July 2017 (“the Judgment”) the parties were advised that the claimant’s claim for unfair dismissal and breach of contract had failed and that the claim was dismissed.
4. By an email dated 30th July 2017 the claimant made an application for a review of the Judgment. The application for review was essentially on 3 main grounds as follows:
 - 4.1 The submission by the respondent, at the start of the hearing, of a chronology which had not been agreed with the claimant;
 - 4.2 Alleged contradictions in the respondent’s skeleton argument which should be considered as new evidence;
 - 4.3 Points on procedure including the fact that the claimant felt under pressure to conclude her cross examination on the second day of the hearing and as such the claimant felt that she was not able to direct the Tribunal to specific evidence and the claimant was, therefore, reliant on the Tribunal’s connection with relevant documents in the bundle. The claimant then provided her own commentary on parts of the Judgment.
5. Unfortunately, due to an administrative error this application was not actioned until 6th September 2017.
6. On 8th September 2017 the respondent’s representatives were asked to provide their comments on the claimant’s application. Such comments were provided by the respondent on 13th September 2017 and sent to the claimant on 29th September 2017 when both parties were advised that I would consider the application for review on 1st November 2017.
7. By an email dated 31st October 2017, which was copied into the respondent’s representative, the claimant provided information for consideration by the Tribunal if the application for review was successful.

Applicable law

8. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237 (“the ET Rules”) provides:

“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, varied or revoked. If it is revoked it may be taken again”.

9. Rules 72 of the ET Rules provides:

“(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers 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 parties 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 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.”

Conclusions

10. In reaching my conclusions I have considered all the documents referred to above as well as the Judgment, my notes of the full merits hearing, the claimant’s witness statement at the full merits hearing and the respondent’s skeleton arguments.

11. Having considered all the above I reach the following conclusions:

Chronology: The claimant did indicate at the start of the hearing that the chronology was not agreed. Having looked at the chronology it appeared to be a neutral document highlighting key dates. As such I indicated to the parties that it would be helpful if the chronology could be agreed. I adjourned the hearing at 10.05am to read the bundle and statements. The hearing recommenced at 1.30pm when I was informed, by the parties, that the chronology was agreed. The claimant confirmed this and at no point did she indicate that she remained unhappy with the chronology. In any event, I am satisfied that the chronology is a neutral document and did not prevent the claimant from presenting her own evidence, which she duly did.

Skeleton argument: The respondent made closing submissions first and the claimant had sufficient opportunity to comment on the submissions made. In any event as pointed out by the respondent’s representative in their email of 13th September 2017 almost all the paragraphs referenced by the claimant as being “new evidence” were considered by the Tribunal and are referenced in the Judgment.

Feeling under pressure to complete cross-examination: The respondent’s evidence took place on the second day of the hearing. Mr Edwards was very ably cross-examined by the claimant from 10.06am to 11.48am following which there was a short break. Mr

Knight was cross-examined from 12.02pm to 12.58pm. The claimant was also granted a short break from 12.25pm to 12.34pm in order to give her some time to consider her questions to Mr Knight. Mrs Bullock was cross-examined from 2pm to 2.50pm. The Tribunal has 10 double sided sheets of notes detailing the claimant's cross-examination. The Tribunal is satisfied that the claimant had sufficient time to cross-examine the respondent's witnesses and at no time, during the hearing, did the claimant indicate that she had had insufficient time to undertake her cross-examination or felt under pressure.

Inability to direct the Tribunal to specific evidence: The Claimant's witness statement which consisted of 13 double sided pages contained copious page references to documents in the bundle including the respondent's policies all of which were read by the Tribunal on the first morning. This was, in addition, to the documentation referred to in the respondent's witness statements. These documents were referred to through out the two days of hearing and were considered again by the Tribunal when making its judgment. The Tribunal is also satisfied that the Judgment already addresses the claimant's comments in relation to paragraphs 9, 22, 23 and 24 of the Judgment.

12. In the circumstances, the claimant's application for reconsideration of the Judgment has no reasonable prospects of success and is refused.

Signed by _____ on 1st November 2017
Employment Judge Choudry

Judgment sent to Parties on

03/11/2017