



EMPLOYMENT TRIBUNALS

Claimant: Mr M Rolston

Respondent: Moving People Limited

HELD AT: Manchester

ON: 2 January 2018

BEFORE: Employment Judge Feeney

REPRESENTATION:

Claimant: Not in attendance

Respondent: Not in attendance

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for a reconsideration of the judgment signed on 6 December 2017 and sent to the parties on 14 December 2017 fails and is dismissed.

REASONS

1. The claimant applied for a reconsideration of the judgment in his case promulgated on 14 December 2017. He made his application on 20 December 2017 relying on the following:

- (1) On the basis of breach of contract (page 3) item (2) that the failure of the respondent to return personal tools to the claimant was a breach of contract and within the Tribunal jurisdiction for the following reasons. Attached are emails from Glen Chamberlain confirming the date that the claimant had collected his tools which was to be on 16 June 2015. As the claimant's resignation was 13 May 2015 then the time was five weeks from resigning to collecting the tools so we cannot understand how this can be out of date. The claimant had not collected his tools earlier as he had hoped to return to work.
- (2) In the judgment of 16 February 2017 (item 2) the respondent conceded at the conclusion of the claimant's evidence that the claimant was a disabled person by reason of the effects of dyslexia and diverticulitis so again we cannot understand why this is out of time.

- (3) **Waltham Forest Borough Council v Omilaju [2004]** Court of Appeal the culmination of events page 18 (item 93), the final straw and culmination of years of being treated in a negative way. The claimant's condition of dyslexia was diagnosed when he was at junior school which means he has always had it and not, as Mr Chamberlain stated, "that he knew the claimant had had it for a while". It shows a complete lack of understanding on the part of the employer of the difficulty that the claimant has to deal with on a daily basis and is a compliment to the claimant that he has been able to cope as well as he had, but everyone has their last straw moment.
- (4) Jurisdiction/time limits – page 21 items 108-110 section 123, the completion of early conciliation was done on 15 May 2015 and the certificate was issued on 15 June and not as stated in the reserved judgment at page 21 item 110 which shows the wrong month and year.

The Law

2. Reconsideration of judgments is contained in rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says that:

- “(70) A Tribunal may, either on its own initiative or on the replication of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.
- (71) Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing within 14 days of the date on which the written record or other written communication of the original decision was sent to the parties, or within 14 days of the date when the written reasons were sent out (if later) and shall set out why reconsideration of the original decision is necessary.

Process

- (72) An Employment Judge shall consider any application made under rule 71:
 - (i) If the Judge considers 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 that 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. The notice may set out the Judge's provisional views on the application.
 - (ii) If the application has not been refused under paragraph (i) the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (i), that a hearing is not necessary in the interests of justice. If the reconsideration

proceeds without a hearing the parties shall be given a reasonable opportunity to make further representations.

- (iii) Where practicable the consideration under paragraph (i) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it, and any reconsideration under paragraph (ii) shall be made by the Judge or, as the case may be, the full Tribunal which made the original which made the decision. Where that is not practicable the President, Vice President or Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, either shall direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.”

Conclusions

3. I make this decision under regulation 72(1) of the above Regulations. Accordingly I have considered it in chambers on my own.

4. I refuse the claimant's application for a reconsideration as I consider it has no reasonable prospect of success on the following grounds:

- (1) In relation to the breach of contract the claimant has misunderstood the Tribunal's decision. The Tribunal rejected the respondent's contention that because the collection was after the end of employment this meant that the claimant's claim was outwith the jurisdiction of the Tribunal. The Tribunal did not accept this contention and therefore found that this claim was in time (indeed it was never out of time). The basis of the Tribunal's decision, to reiterate, was that the Tribunal was willing to imply a term that the claimant's tools should be returned on termination, but that this implied term was subject to the respondent making reasonable efforts to collect the tools which we found as a fact they did. The implied term could not be absolute as this would clearly be unreasonable as tools could be lost and yet the respondent could still be in breach of contract.
- (2) The claimant's disability was indeed conceded. In respect of out of time claims, the only two claims which were out of time were the two disability claims in respect of the boat incident and allegedly forcing the claimant to return too early after his operation- both claims related to the diverticulitis. They were both time specific claims which had end dates and therefore time ran from the end date. One incident occurred in 2012 and one in March 2014 . Accordingly clearly these are out of time taking the approach that as the claimant resigned on 15 May 2015 he would, on the broadest understanding of the time limits, be able to bring a claim in respect of events occurring three months prior to 15 May i.e. 16 February 2015 . Clearly both events occurred significantly before that time and therefore they were out of time unless they were part of a continuing course of conduct ending with his resignation, which was clearly not the case in relation to these two events relied on. No other claims were deemed out of time.

- (3) In relation to the **Omilaju** case, this was cited in the panel's judgment and considered by the Tribunal. The issue of when the claimant was diagnosed with dyslexia and how long he had had it was not relevant to the constructive unfair dismissal claim nor to the determination of out of time in relation to the disability claims. Accordingly the matters raised by the claimant in relation to this are not relevant to any of the issues the Tribunal had to determine, and therefore there has been no cogent reason put forward for why the Tribunal should reconsider its conclusions.
- (4) The Employment Judge agrees that paragraph 110 and 112 are incorrect. Accordingly paragraph 112 will be removed and 110 will be amended via a Certificate of Correction to say the claimant completed early conciliation notification on 15 May 2015 and was issued with a certificate on 15 June. The claimant presented his claim in time on 22 July in respect of his dismissal and, as referred to above, any events up to 16 February. However, the events which were deemed out of time occurred in 2012 and 2014. The Employment Judge however recognises the errors and will issue a Certificate of Correction as related.
5. Accordingly the claimant's application for a reconsideration of our decision fails and is dismissed.

Employment Judge Feeney

Date 2nd January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
9 January 2018

FOR THE TRIBUNAL OFFICE