EMPLOYMENT TRIBUNALS

Claimant: **Mr E Morris**

Respondent: **Conneely Drylining Ltd**

RECONSIDERATION JUDGMENT

The claimant's application dated **14 December 2017** for reconsideration of the judgment sent to the parties on **19 December 2017** is refused.

REASONS

1. In my judgment there is no reasonable prospect of the original decision being varied or revoked for the following reasons.
2. On 30 November 2017 I gave oral judgment with reasons dismissing the claims as having been brought out of time. I refused to exercise my discretion to extend time.
3. This case was unusual because the Claimant, contrary to instruction by the Tribunal in correspondence, had not produced the ACAS Certificate, nor had he found out from ACAS the relevant dates of any Early Conciliation ('EC'). All he had managed to do was obtain an ACAS Certificate number. I proceeded on that basis, mainly because the parties were before me and had prepared the time limit issues for hearing. I found on the evidence that EC was likely to have occurred in 2017, soon after the Claimant had sought advice. I put the dates of EC starting at May or June but in calculating the expiry of the primary three month time limit, I added a month to the time limit to allow for EC, which was the maximum the law allowed. I put the expiry of the time limit therefore at 10 September 2016.
4. The question of EC was important because a Tribunal cannot hear a claim unless EC has occurred. EC must take place in relation to the correct Respondent, or minor errors in a Respondent's name can be corrected. At the hearing, although it was open to it to do so, the Respondent did not make any submissions that I should not hear the claims because no EC had taken place. I therefore expressly observed at the end of my decision that if the Claimant found out the relevant EC timings he could seek a reconsideration if advised.
5. I found as a fact that the Claimant had sought advice from several advice agencies, including a Law Centre, at an early stage. I decided there was no

evidence that the Claimant had been wrongly advised as to time limits by any of these agencies and that at least one of them was likely to have informed him of the relevant time limit.

6. The application for reconsideration relies on two new pieces of evidence. First, an email from ACAS showing that EC started on 14 July 2016 and ended on 14 August 2016 and was in respect of 'Connley Stephen Cochrane'. And, second, a letter from Haringey Law Centre dated 13 December 2017 stating that he visited their office first on 7 July 2016 and first received specialist employment advice from a volunteer barrister on 27 September 2016. The Law Centre does not state what this advice was. Mr Robison submits that this evidence shows that the Claimant was taking prompt action in relation to his claim and secondly that he had been erroneously advised not to put in a Tribunal claim quickly and that these factors should weigh in favour of an extension of time being granted. The Claimant relies on Chohan v Derby Law Centre [2004] IRLR 685. The Claimant argued that the new evidence should be considered because 'the Claimant did not fully understand that the exact details of when advice was being received by him could have importance' at the Preliminary Hearing.

7. The Respondent has made submissions by way of a letter of 20 December 2017. They argue the application is premature, coming before the written reasons having been promulgated. In any event the Respondent argues there is no prospect of the decision being revoked or varied because the ACAS EC dates do not alter my decision and, relying on the legal principle set out in Ladd v Marshall [1954] 1 WLR 1489, it would not be just to allow the new evidence from Haringey Law Centre to be allowed.

Law

8. **Rule 72(**1) of the Employment Tribunal Rules of Procedure 2013 provides that *'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. The notice may set out the Judge's provisional views on the application.'*

9. I must, therefore, consider first whether there is any reasonable prospect of the original decision being varied or revoked.

10. One of the overriding principles of justice is that there should be finality in litigation. Courts and Tribunals do not easily allow a party a 'second bite' at the litigation cherry, if it can be called that. An example of this principle is that a Tribunal will only consider new evidence if it could not have, with reasonable diligence, been obtained prior to the original hearing; and if it is relevant and likely to have an important influence on the result, see Ladd (above).

ACAS Dates

11. First, it seems to me the ACAS information could have been obtained with reasonable diligence prior to the original hearing. The Claimant was represented by FRU for the hearing on 4 October and he had been encouraged by the Tribunal in correspondence to find the certificate. It is

not possible, on those facts, to argue that he did not appreciate its significance.

12. Nevertheless, because EC is a jurisdictional issue (going to my power to hear a case), and because I expressly allowed for the making of a reconsideration if the information could be found, I have considered the dates the Claimant now provides. The further ACAS information does not assist him because I have found as a fact in my original decision that EC took place at about that time and it is unlikely that the exact dates would change my decision in his favour. In paragraph 32 of the written decision I found that, if I had added a month for EC to the original time limit, time would expire on 10 September. If I had known that the ACAS Certificate ended on 14 August, this expiry date might have become 14 September. In the context of the overall delay, there is no reasonable prospect that extending the primary time limit by those 4 days would alter my decision. I found that EC had happened at this early stage and had therefore already taken into account in my decision that the Claimant had acted quickly in this respect. As far as that went, it was a factor in favour of the Claimant. It did not, however, deal with the period after the end of EC when no claim was made for a further 8.5 months.

13. Indeed, if anything, the further email from ACAS raises a real question whether there has been EC in this case because the name of the employer involved in the EC, as set out in the ACAS email now provided is Connley Stephen Cochrane. There is a real question whether that can be regarded as a minor error. If there has been no effective EC, then the Claimant cannot present his claim to the Tribunal, see section 18A Employment Tribunals Act 1996. This is a jurisdictional point (going to the power of the Tribunal to hear the claim). Therefore even though it was a point not taken by the Respondent at the preliminary hearing, I am obliged to consider it. This point makes it even more unlikely that the decision would be revoked or varied in favour of the Claimant, if I were to hear the reconsideration application.

Information from Haringey Law Centre

14. Applying the *Ladd* principles, it does not appear to me to be fair to consider the further information from Haringey Law Centre. This was information that could, with reasonable diligence, have been obtained prior to the Preliminary Hearing. The Claimant was represented from at least early October and it would have been obvious to any legal representative that what advice the Claimant was given and when was a relevant factor: indeed, the Claimant relied on Chohan at the Preliminary Hearing, which is a case dealing expressly with this factor. It was not an onerous task to obtain the information – it has been provided within a couple of weeks of my oral decision. It is contrary to the interests of justice, in particular, the finality of litigation for me to look at this information.

15. In any event, the information from Haringey Law Centre is not likely to have assisted the Claimant. It gives the dates upon which he received advice: my decision already finds that he had been to a law centre at an early stage. It does not state what that advice was. I am invited to infer from it that erroneous advice was given as to time limits. I cannot infer that. The letter is equally consistent with the proposition that time limits advice was given as was not given, for example the Claimant could have been given information

about time limits along with advice that the case was not a strong one. I had no evidence from the Claimant about the matter one way or another. Given the number of agencies the Claimant sought advice from at an early stage, I found that it is likely that at least one of them will have given him information about time limits. I do not consider that the letter from Haringey has any reasonable prospect of changing that finding.

16. For all of the above reasons, there is no reasonable prospect of the decision being revoked or varied and I do not therefore allow the reconsideration application.

Employment Judge Moor

9 January 2018