EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Agnieszka Gbidi	**v**	Aermid Health Care plc (1) Mrs Carol Edwards (2) Mrs Rebecca Archer (3)

Heard at: **Bristol Employment Tribunal** **On: 15 December 2017**

Before: **Employment Judge O'Rourke**

DECISION ON APPLICATION FOR RECONSIDERATION

1. The Claimant's application of 12 November 2017 (received 13 December 2017), for reconsideration of the Judgment of 8 November 2017 is refused.

REASONS

1. The Claimant has made an application for reconsideration of the Judgment of 8 November 2017, which dismissed her claim of race discrimination against the Third Respondent, for want of jurisdiction (as having been presented out of time).

2. Having considered her application and applying Rule 72(1) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013, I find that there is no reasonable prospect of the Judgment being varied or revoked and therefore refuse the application.

3. I do not find, applying Rule 70, that the interests of justice render it necessary to reconsider the Judgment.

4. The Claimant states that ill-health prevented her from attending the hearing on 8 November and therefore submits that the refusal of the Tribunal to grant her application for adjournment prejudiced her ability to present her case.

5. As set out in the Judgment reasons (paragraphs 2 and 3), the issue of the Claimant's non-attendance at the hearing was fully considered. She had made an application for adjournment on 6 November 2017, citing medical reasons and that application was refused on 7 November 2017, by the acting Regional

Employment Judge "on the basis that the doctor's note gave no indication of when the Claimant would be fit to attend any hearing and it was noted that the acting REJ was '*not satisfied that in these circumstances the Claimant will attend any preliminary hearing. It is in the interests of justice that the preliminary issue is resolved without any further delay.*"

6. While the Claimant asserts in her application that she has '*been an active participant in proceedings'*, a reading of the chronology of these proceedings (as set out in paragraph 11 of the Judgment) indicates that that is not the case. Since at least mid-2013, she has been primarily responsible for the prolonging of this case over the intervening four-plus years. A brief summary of such inactivity, or delaying activity, is as follows:

   a. 8 May 2013 – she was subject to 'unless' orders for non-compliance with previous orders.

   b. August and September 2013 – the National Midwifery Council (NMC) hearing (related to the events of the claim) was twice postponed at her request. When eventually held, the Claimant did not attend the entire hearing.

   c. August 2014 – the Claimant submitted an appeal to the Court of Appeal, against one aspect of an EAT judgment, namely that her case should not be heard in Exeter, which appeal, when heard in January 2015, was dismissed as wholly without merit. Ongoing Tribunal case management was suspended pending this outcome and other appeal outcomes (as set out below).

   d. February 2015 – the Claimant appealed to the EAT against the contents of a case management order which was dismissed in March as having no reasonable prospect of success.

   e. 20 May 2015 – the Claimant applied again to the EAT, for leave to appeal against the Tribunal's acceptance of the Second Respondent's response, which application was rejected as totally without merit. The Claimant appealed against that decision. It was listed for hearing on 15 July 2015, but adjourned at her request, on medical grounds. When re-listed for 23 September 2015, it was dismissed.

   f. 5 November 2015 – the Claimant applied for leave to appeal against that judgment to the Court of Appeal, which on 12 February 2016, dismissed the application as having no prospect of success whatsoever and refused leave to appeal to the Supreme Court, stating that '*The Appellant seems wholly unable or unwilling to accept case management directions in relation to her case … these appeals have already had the effect of slowing down an already excessively lengthy case. The Appellant must now proceed to have her dispute resolved substantively, without raising unarguable points in attempted appeals. Otherwise she will risk being made the subject of a civil restraint order.'*

   g. 8 April 2016 – the Tribunal re-listed the PHR hearing for 2 June 2016 and refused two applications from the Claimant, in April and May, to adjourn the hearing on medical grounds.

h. 31 May 2016 – nonetheless, the hearing was adjourned on medical grounds.

i. 1 July 2016 – the hearing was stayed for an additional two months, again on medical grounds.

j. 22 November 2016 – the hearing was relisted for 4 January 2017, but again adjourned on 15 December, on medical grounds.

k. 4 April 2017 – the hearing was re-listed for 13 June 2017, but again postponed, on 8 June, on the basis that the Claimant's doctor expressly indicated that she would be likely to be fit to attend a hearing after 10 July 2017.

l. 31 August 2017 – the hearing was relisted for 8 November 2017. Despite further applications to adjourn, both on grounds of witness availability and illness, the hearing proceeded, in the Claimant's absence.

7. It is clear to me, therefore that the Claimant has been anything but 'active' in these proceedings, but instead, as found by the Court of Appeal, has by her actions '*had the effect of slowing down an already excessively lengthy case'*.

8. The medical evidence she now seeks to adduce (the original letter from her GP dated 6 November 2017 relied upon in her application of that date, with an addendum note dated 8 November 2017) was not before the Tribunal at the Preliminary Hearing on 8 November 2017. I note that it was sent to Plymouth County Court, not the Magistrates Court, where the hearing was taking place and did not refer to the fact that it related to an employment tribunal case, so it is unsurprising that it was not brought to the Tribunal's attention. In any event that letter merely states that the Claimant was unable to attend the hearing due to medical problems, but gave no prognosis as to when she would be fit to attend a hearing (required in respect of any further such applications, following the Tribunal order of 15 December 2016). It requested that the hearing be postponed to 'next week', but, firstly, it would have been impossible to re-arrange the hearing at such short notice and in any event no rationale was offered as to why the Claimant would be able to attend 'next week', or any week.

9. I concur, therefore, with the Acting Regional Employment Judge's decision of 7 November 2017 that both she and I could not be satisfied, in these circumstances that the Claimant would ever be able to attend the Hearing.

10. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Also, the Overriding Objective of the Rules (Rule 2) indicates that dealing with a case fairly and justly includes avoiding delay, which Objective the parties '*shall assist the Tribunal to further'.* I consider, in this case that the Claimant has had ample opportunity over the five years since she brought her claim against the Third Respondent to have it heard, but by a combination of illness and delaying tactics on her part, contrary to her obligations under the Objective, has failed to progress it and I have no confidence, if left to proceed that it ever will, in any reasonable timeframe.

11. I have to consider the interests of justice in terms of justice to both parties. While the Claimant is now unable to pursue her claim against the Third Respondent, she, firstly, has had already ample opportunity to do so, but has not and secondly she is able to continue with a near identical claim against the Second Respondent and therefore still has the opportunity, if successful, to seek remedy for any discrimination she has suffered. On the other hand, however, the Third Respondent has had to defend herself against this claim for over five years now, to include multiple appeals, bear the costs of such litigation and if the Claimant's claim were permitted to proceed, face the prospects of continued delay on her part. Such an outcome cannot be in the interests of justice, or comply with the Overriding Objective of the Rules.

12. I note the Claimant's now further submissions in respect of the jurisdictional issue, but as I have refused her application for reconsideration, they are not further considered. I comment, however that the Claimant has now belatedly provided a closely-typed eight page submission, which option would have been open to her, had she chose to do so, in advance of the Hearing, but instead limited herself to a relatively short statement. Any such written submission would, of course, have been given due consideration in the Judgment.

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Employment Judge O'Rourke
Dated 15 December 2017

Sent to the parties on:
4th January 2018
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For the Tribunal:

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