EMPLOYMENT TRIBUNALS

Claimant: **Ms D. Njoroge**

Respondent: **University of the Arts London and others**

London Central **9 October 2017**

Employment Judge Goodman

RULE 72 CONSIDERATION OF APPLICATION TO RECONSIDER

Reasons sent 10 October, corrected 1 November, now resent

1. At a preliminary hearing on 29 August 2017, orders were made striking out some of the claims, against various respondents, and allowing the addition of two respondents for other claims. The claimant was to provide further particulars of the victimisation and discrimination claims by 17th of October. The decision was sent to the parties on 12 September 2017.

2. Later, on 12 September the claimant wrote to the tribunal and the President of Employment Tribunals seeking to complain about me as the judge conducting the hearing, but about matters not mentioned in the decision. At the direction of the Regional Employment Judge a letter was sent to the claimant asking her to notify the Employment Tribunal if she wished the decision to be reconsidered, to notify the Employment Appeal Tribunal if she wished to appeal, and was also directed to the appropriate website if she wished to make a complaint of judicial misconduct. On 27 September the claimant replied that she wished to seek reconsideration of the decision. For the reason for that, she referred back to the email of 12

September, but added that it was because of the "ineptness" of the judge, who was biased in her approach, limited the information that she was relying on in fighting the case, and "refused to include most of the key information" that she had spent time clarifying in the hearing.

3. She also requested a fresh preliminary hearing, with a different judge, to "explore the issues I raised" on 29 August 2017.

4. She also complained that when sent an earlier decision in December 2016 (15 December 2016, Employment Judge Grewal) she was not referred to the booklet on how to appeal or apply for reconsideration, and therefore had applied for reconsideration rather than appealing then. This is for the administration to answer: it is not clear from the paper file what letter or email was sent to the claimant and the respondent when the case management notes were served. It is also for the claimant to consider whether to appeal out of time.

5. There is also a request for return of fees paid. This is not a matter of the judiciary. However, I understand the Ministry of Justice is arranging to refund fees paid in employment tribunal claims, though I am not aware of the proposed timetable.

Law Relevant to Reconsideration

6 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.

7 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. Rule 72(3) also states that "where practicable, the reconsideration… shall be by the employment judge who made the original decision", and whether that is not practicable the Regional Employment Judge should appoint another employment judge to deal with it.

8 Under the 2004 rules prescribed grounds for review (now, reconsideration) 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 (review).

Discussion

9 Much of the emails of 12 September and 27 September deal with alleged bias, such as, paying more attention to counsel for the respondent, failing to understand what the claimant said, and rushing her. She does not identify what are the issues which she says have been wrongly omitted, except that to say she would be issuing proceedings in the High Court and that the employment tribunal claim should be stayed. There is also a complaint that listing the hearing in March 2018 does not allow her enough time for preparation.

10 To take the specific issues first: Paragraph 5 of the Case Management Summary (a separate document to the Reasons for the preliminary hearing judgements) deals with the proposed High Court action for defamation. It sets out what the parties should do if a High Court action is begun, so that the Tribunal can consider whether a stay is appropriate. The case management summary also gives the reason for listing the case in March 2018, rather than in May or June as requested. Specifically, the reason given by the claimant for needing more time is that she had to transcribe the notes of the disciplinary hearing. As the listing allowed the claimant more than six months in which to do this, it is hard to see how this is unreasonable. No other reason is given why this listing is premature.

11 On other matters, given the lack of detail it is hard to say in what way relevant information was not taken into account when considering the respondent's application to dismiss various claims, and the claimant's application to amend. No grounds are shown why any of the decisions made in the judgement should be reconsidered in the interests of justice.

12 The general allegation bias is a matter for the Employment Appeal Tribunal on an appeal, or for a complaint of judicial misconduct.

13 I conclude that on the basis of these two emails, there is no reasonable prospect of the decision being reconsidered under the 2013 Rules of Procedure.

Note

The text of the reasons sent to the parties on 10 October 2017 was inadequately corrected. When pointed out, the text was corrected on 1 November 2017. Unfortunately, the version then printed out and signed was the first, uncorrected one. These reasons are printed from the text corrected on 1 November 2017.

Employment Judge Goodman on 2 January 2018