



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Drinkov

Lidl Great Britain Limited

JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made by email of 1 August 2018 to reconsider the preliminary hearing judgment sent to the parties on 20 June 2018 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application to reconsider is refused as there is no reasonable prospect of the judgment being varied or revoked.

REASONS

Introduction

1. By a claim form presented on 27 December 2017 the claimant presented complaints of unfair dismissal, disability discrimination, unlawful deduction of wages and/or breach of contract. A number of other documents have been sent to the tribunal by the claimant as described in the order sent to the parties after the preliminary hearing on 11 June 2018 which is now the subject of requests for reconsideration and written reasons.
2. In the judgment sent to the parties on 20 June 2018, I confirmed that the "ordinary" unfair dismissal claim was dismissed because the claimant did not have two years' service. This was an uncontentious decision as the claimant confirmed in the hearing that he was employed between October 2016 and October 2017 and that he understood he could not claim "ordinary unfair dismissal". He wishes to proceed with a claim that he was dismissed for making public interest disclosures and, as the judgment makes clear, this claim proceeds to preliminary consideration at a further preliminary hearing in November.

3. The claimant first suggested that he wished to apply for reconsideration on 3 July and asked for more time. I was unclear as to why he needed time and what aspects he wished me to reconsider. He eventually made a detailed application on 1 August 2018. This is an extraordinarily complex 29 page document. Doing the best I can, I will try to summarise it. The claimant asks for more time to bring the reconsideration application, providing a number of reasons why it should be considered. There is then a heading "Check-list/points index/Feedback" with roman numerals referring (it seems) to historical matters of case management. There are a great number of references to individuals at the respondent under 61 numbered points. The claimant suggests many times that the respondent has not complied with orders and that I dealt with matters unfairly. Although I have tried a number of times, I cannot ascertain what aspect of the judgment, which is, for the most part, a case management order, the claimant wishes me to reconsider.
4. When invited to comment, the respondent's representative did so on 10 September 2018. In short, the respondent says the application for reconsideration is out of time and that it is misconceived.
5. The claimant then sent a further document of three pages with new matters numbered 62-66 by email on 11 September 2018. He raises further issues of process and makes allegations of "misconducts" by "known and unknown clerks" "or Judge Manley itself" and asks for written reasons and a transcript. The document does not appear to touch directly on this reconsideration application. He has also appealed to the EAT.

Rules

6. The relevant employment tribunal rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) 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 that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), 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.

(2) If the application has not been refused under paragraph (1), 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 (1), 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 written representations.

(3) Where practicable, the consideration under paragraph (1) 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 (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

7. In essence, my task is to consider whether the application has been made in time. If it has, I should consider whether a reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

8. This preliminary hearing, which was almost entirely a case management matter was heard over a full day, with oral judgment and considerable discussion on process and procedure for hearings. We had detailed discussions about recording the hearing with eventual agreement that both parties could audio record the public part of the hearing on their phones as the tribunal has no facilities. An order was made with prohibiting the dissemination of the recording. The claimant agreed his dates of employment as being between October 2016 and October 2017. He agreed and I recorded that any “ordinary” unfair dismissal claim could not proceed.

9. The hearing then moved to trying to clarify the issues. The judgment shows how much progress was made on that. There was a small addition made to the claims in that a race discrimination element was added to the comment which was the disability discrimination allegation. The hearing was detailed and lengthy. It was the claimant's opportunity to give information, ask questions and raise issues.
10. Although the reconsideration application has been made out of time, I have decided to give it due consideration, partly because the claimant did ask for time.
11. However, having considered it, I take the view that it is completely hopeless. The claimant has been unable to point directly to any aspect of the judgment which he believes should be reconsidered. There is to be another preliminary hearing to make decisions on what aspects can proceed. There is nothing in what the claimant has said which indicates that it is in the interests of justice to re-open matters. I must refuse this application as there is no reasonable prospect of the judgment being varied or revoked.

Dated 19.09.18

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Employment Judge Manley
South East Region

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Judgment sent to the parties on
19.09.18

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For Secretary of the Tribunals