



EMPLOYMENT TRIBUNALS

Claimant: Miss N. Wood

Respondent: Liz Earle Beauty Co. Limited

Heard at: EXETER **On:** Monday, the 10th September 2018
and Tuesday, the 11th September 2018

Before: Employment Judge D. Harris
Ms S.M Christisan
Mr I. Ley

Representation

Claimant: Mr Benzin (Claimant's partner)
Respondent: Mr N. Moore (counsel)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of the Tribunal's judgment given orally at the conclusion of the final hearing on the 11th September 2018 and the Tribunal's decision to order that the Claimant's deposit of £250 be paid to the Respondent. A written record of the judgment and the decision in respect of the deposit was provided to the parties as soon as practicable after the final hearing.

2. The grounds of the application for a reconsideration of the judgment and the decision in respect of the deposit are set out in an email from the Claimant that was received by the Tribunal Office on the 12th September 2018.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 (“the Rules”). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The Claimant’s application was therefore received within the relevant time limit.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The grounds relied upon by the Claimant can be summarised as follows:
 - 5.1 The Tribunal at the final hearing had not read and considered the Case Management Orders made in the course of the proceedings before making its judgment and its decision in respect of the deposit.
 - 5.2 At the final hearing, the Respondent’s counsel only referred to the Deposit Order that had been made by Employment Judge O. Harper on the 18th May 2017.
 - 5.3 The Tribunal, at the final hearing, failed to have any or any adequate regard to Mr Benzin’s submission that Employment Judge Reed, at a Telephone Case Management Preliminary Hearing on the 15th September 2017 had indicated that he could not understand why a Deposit Order had been made in the case on the 18th May 2017.

- 5.4 The Tribunal, at the final hearing, should have made further inquiries as to the comments said to have been made by Employment Judge Reed at the Telephone Case Management Hearing on the 15th September 2017 concerning the making of the Deposit Order.
- 5.5 The Tribunal, at the final hearing, failed to have regard to the fact that Employment Judge Roper, at a Telephone Case Management Preliminary Hearing on the 22nd February 2018, when giving permission to the Claimant to refer at the final hearing to her allegation that on the 1st July 2016 Ms Scott made age-related comments to the Claimant, gave no indication that the age discrimination claim brought by the Claimant had little prospects of success.
- 5.6 The decisions made at the Telephone Case Management Preliminary Hearings on the 15th September 2017 and the 22nd February 2018 were inconsistent with the making of the Deposit Order on the 18th May 2017.
- 5.7 There was a factual error made by the Tribunal at the final hearing in respect of Mr Benzin's role at a meeting that took place on the 11th August 2017. The Tribunal stated that Mr Benzin was representing the Claimant at that meeting with the Respondent whereas the true position is that he was there to support her.
6. The matters raised by the Claimant in her application for a reconsideration of the judgment were considered in the light of all of the evidence and submissions presented to the Tribunal before it reached its unanimous decision on the 11th September 2018. Further, the Tribunal also reminded itself of the following propositions of law relating to an application for reconsideration of a judgment. The Employment Appeal Tribunal ("the EAT") in *Trimble v Supertravel Ltd* [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in *Fforde v Black* EAT 68/60 the EAT decided that the interests of justice ground of review does not mean *"that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically*

wrong with the procedure involving a denial of natural justice or something of that order”.

7. Turning to the matters raised by the Claimant in her application, it was when the question of costs was raised by the Respondent’s counsel after judgment had been given orally at the final hearing, that the Tribunal first read and considered the Deposit Order made by Employment Judge O. Harper on the 18th May 2017 and the Order made by Employment Judge Reed at the hearing on the 15th September 2017. For the purposes of considering the application for a reconsideration of the judgment and the decision in respect of the deposit, the Tribunal has now read and considered the Order made by Employment Judge Christensen on the 15th March 2017 and the Order made by Employment Judge Roper on the 22nd February 2018.

8. In the judgment of the Tribunal, there is no merit in the Claimant’s central submission that the Orders made on the 15th September 2017 and the 22nd February 2018 were inconsistent with the making of the Deposit Order on the 18th May 2018. In reaching that decision, the Tribunal had regard to the following chronology regarding the case management of the proceedings:
 - 8.1 The first Telephone Case Management Preliminary Hearing took place on the 15th March 2017 before Employment Judge Christensen. It is plain from the Order that there was a full discussion at that hearing of the issues arising in the Claimant’s claim of age discrimination. Employment Judge Christensen gave the Claimant permission to file and serve further information regarding her age discrimination claim and for the Respondent to file and serve an Amended Response to the claim. Pursuant to that direction, the Claimant filed and served further information that was to be found at pages 31-40 in the Hearing Bundle. The further information was considered by the Tribunal at the final hearing. Employment Judge Christensen also ordered, at the hearing on the 15th March 2017, that there be a further Telephone Preliminary Hearing to determine whether the Claimant’s age discrimination claim had little or no reasonable prospect of success.

 - 8.2 The question whether the Claimant’s age discrimination claim had little or no reasonable prospect of success came before Employment Judge O. Harper on the 18th May 2017. The

Employment Judge decided, for reasons set out in the Order, that the Claimant's allegations or arguments that she had been subjected to harassment and/or direct age discrimination and victimisation had little reasonable prospect of success. As a result of that decision, the Employment Judge ordered the Claimant to pay a deposit in the sum of £250 as a condition of being permitted to continue to advance the claims of harassment, direct age discrimination and victimisation. The Claimant subsequently paid the deposit and the claims of harassment, direct age discrimination and victimisation were pursued to a final hearing over the course of 2 days on the 10th and 11th September 2018.

- 8.3 The Claimant made no application to reconsider the Deposit Order and brought no appeal against the making of the Deposit Order.
- 8.4 The next Telephone Case Management Preliminary Hearing took place on the 15th September 2017 before Employment Judge Reed. The purpose of the hearing, as stated on the face of the Order, was to have a discussion with the parties with a view to giving directions for the further conduct of the proceedings. It is evident from the Order that that discussion took place and that directions were given. It is also clear from the wording of the Order that there was no reconsideration at the hearing, either by application or by the Tribunal of its own motion, as to whether the Deposit Order should or should not have been made. Though there was discussion as to the issues arising in the age discrimination claim, the Tribunal is satisfied, from the wording of the Order, that no indication was given by Employment Judge Reed to the effect that the Deposit Order should not have been made and should be revoked. It is right to say that the Employment Judge directed that any questions as to whether any allegations of age discrimination were "out of time" were to be dealt with at the final hearing but that direction, however, did not have the effect of undermining or contradicting the making of the Deposit Order on the 18th May 2017. It follows that the Deposit Order still stood at the conclusion of the hearing on the 15th September 2017. The Tribunal is satisfied that nothing occurred at the hearing on the 15th September 2017 that could reasonably have led the Claimant to believe that the Deposit Order had been revoked.
- 8.5 The final Telephone Case Management Preliminary Hearing took place on the 22nd February 2018 before Employment Judge Roper. The purpose of the hearing was to hear an application

being made by the Claimant to amend her claim and to give final case management directions before the final hearing. It was at that hearing that the Claimant was given permission to refer at the final hearing to her allegation that Ms Scott had made age-related comments to the Claimant on the 1st July 2016. In passing, it is to be noted that pursuant to that permission, the Claimant gave evidence at the final hearing about the comments alleged to have been made by Ms Scott on the 1st July 2016. It is evident from the written Order issued by Employment Judge Roper that there was no discussion about the Deposit Order at the hearing on the 22nd February 2018 and there was no reconsideration of the making of the Deposit Order. The giving of permission by Employment Judge Roper to the Claimant to refer to the alleged comment made by Ms Scott on the 1st July 2016 did not have the effect of undermining or contradicting the Deposit Order as contended by the Claimant in her application for a reconsideration of the judgment and the decision in respect of the deposit. It follows that the Deposit Order still stood at the conclusion of the hearing on the 22nd February 2018. The Tribunal is satisfied that nothing occurred at the hearing on the 22nd February 2018 that could reasonably have led the Claimant to believe that the Deposit Order had been revoked.

9. The Tribunal accordingly rejects the Claimant's central submission in her application for a reconsideration of the judgment and the decision concerning the deposit that inconsistent Case Management Orders had been made in the course of the proceedings that had the effect of undermining or contradicting the Deposit Order or causing confusion as to whether the Deposit Order still stood. The Tribunal also rejects the contention that the fairness of the final hearing was adversely affected by the fact that the Tribunal did not have before it at the final hearing the Case Management Orders that had been made on the 15th March 2017 and the 22nd February 2018. Having read and considered those Case Management Orders for the purposes of considering the application for reconsideration of the judgment and the decision in respect of the deposit, there is nothing in those Orders that would have had any material impact upon the evidence that was heard and read at the final hearing, the submissions that were made by the parties and the Tribunal's judgment and decision based on the evidence that it heard and read.

10. The Tribunal also rejects the contention that there was justification for further inquiries to have been made at the final hearing as to the Order made by Employment Judge Reed on the 15th September 2017. The Tribunal had before it a copy of the Order that had been made by Employment Judge Reed and, in the judgment of the Tribunal, that was a sufficient record of the discussion that had taken place with the parties on the 15th September 2017.

11. Lastly, the Tribunal rejects the contention, if such contention is being made, that the finding made by the Tribunal as to Mr Benzin's role at the meeting on the 11th August 2017 had any material effect upon the findings of fact made by the Tribunal that led to the dismissal of the age discrimination claim.

12. Accordingly the Tribunal refuses the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge David Harris

Dated: 15th November 2018

Judgment entered in Register
and copies sent to parties on

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for the Tribunal Office