



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Stubbs

Mass Consultants Limited

JUDGMENT ON RECONSIDERATION

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

Upon the claimant's application made by letter of 1 August 2018 to reconsider the preliminary hearing judgment sent to the parties on 26 July 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 18 October 2018 the claimant presented a claim of disability discrimination. At a preliminary hearing on 16 July 2018 I determined that the claim had been presented out of time and the tribunal had no jurisdiction to hear it as it was not just and equitable to extend time. I gave oral judgment and the short judgment was sent on 26 July.
2. The claimant wrote on 1 August 2018 asking that I reconsider that judgment. The application is contained within a document of 41 pages. Doing the best I can, I now summarise the application. The claimant reminds me of the relevant dates, none of which were in dispute. The claimant's last day of attending work was 31 March 2017. He was then on sick leave and resigned by letter on 4 April with employment terminating on 3 July. He referred the matter to ACAS on 23 August 2017 with a certificate being dated 8 September. The claim was presented on 18 October 2017. The claimant also reminded me of his health conditions of autism, dyslexia and asthma which I was aware of. He refers to a number of cases where the effect of the ACAS early conciliation on time limits has

been considered. In essence, the claimant argues that the time limit should start to run from the end of employment with additional time for the ACAS early conciliation process added in.

3. The respondent's representatives oppose the application for reconsideration and I have taken their comments into account.

Rules

4. 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.

5. In essence, my task is to 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

6. This matter was heard and determined at the preliminary hearing as listed. I heard no evidence but I asked the claimant a number of questions about what had happened towards the end of his employment and thereafter. He agreed that there had been no allegations of discriminatory acts after he began sick leave at the end of March 2017. He confirmed that he had sought advice in April and August and then again on 18 October when he was advised to present the claim that day. He told me he had concerns about fees but then understood they had been abolished.
7. Both parties made submissions and, after an adjournment for me to consider matters, I gave oral judgment with reasons. In summary, I decided that the last act of alleged discrimination was no later than 31 March 2017, or, at the latest, 4 April 2017 when the claimant wrote his resignation letter. The claimant had not referred the matter to ACAS until 23 August 2017 which was already about 6 weeks out of time. The claimant had already taken advice at that point. I took into account that the claimant had been unwell and suffers from some significant health conditions but was also aware that he had looked into matters and been able to get advice. The ACAS certificate was dated 8 September 2017 but it was not until 18 October 2017 that the claim form was presented. Whilst I had some sympathy for the claimant as he appeared to believe time could be calculated from the end of employment, I was bound to apply the time limits in Equality Act 2010. The prejudice to the respondent is significant and the claimant did not convince me that the circumstances were such that it was just and equitable to extend time.
8. The application repeats some of the arguments that I heard and considered alongside the evidence. The application attempts to re-argue that which I have already considered and decided. There is no clear reason given as to why it would be in the interests of justice to reconsider.

9. The claimant is, not surprisingly, dissatisfied with the outcome but the preliminary point was fully explored and the legal tests applied. There is nothing in what is now said by the claimant which shows 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 18 September 2018

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Employment Judge Manley
South East West Region
20 September 2018

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Judgment sent to the parties on

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For Secretary of the Tribunals