



EMPLOYMENT TRIBUNALS

Claimant: Ms P O'Neill

Respondent: Jaeger Retail Limited

JUDGMENT

The claimant's application dated 31 October 2018 for reconsideration of the judgment sent to the parties on 17 October 2018 is refused.

REASONS

Introduction

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claim because it was brought out of time. That application was contained in a six page document attached to an email of 31 October 2018 with some copy documents attached.
2. Written Reasons for my judgment were subsequently sent to the parties on 8 November 2018.
3. On 21 November 2018 Regional Employment Judge ("REJ") Parkin wrote to the claimant asking her if she was making a complaint of judicial misconduct, and seeking confirmation that her application for reconsideration had been copied to the respondent as the rules require.
4. There is no reply on the Tribunal file, but the claimant lodged an appeal with the Employment Appeal Tribunal on 29 November 2018 using the same documentation. The lodging of an appeal does not prevent a Tribunal dealing with a reconsideration application, not least because if the application succeeds the appeal might become unnecessary.
5. On 18 December 2018 I instructed that the Tribunal should send a copy of the application to the respondent and that the respondent had until 11 January 2019 to make any comments.

6. On 8 January the respondent indicated by email it was happy for me to proceed as I saw fit. The claimant also supplied some further comments by email of 8 January, suggesting that REJ Parkin had dealt with the hearing on 15 October 2018, not me. I took this material into account as well as the claimant's original application.

7. References in square brackets (e.g. [25]) are references to paragraph numbers from the Written Reasons.

The Law

8. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

9. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

10. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay.

11. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

The Application

12. The claimant raises a number of different points in her application which I will address in turn.

Respondent's representative

13. The claimant says that the identity of the respondent's representative was not the same as the person she believed would be attending. Unsettling as this might be for a litigant representing herself, it does not provide any grounds for reconsidering the judgment.

Identity of Judge

14. In her initial application the claimant complained that the Judge should have been REJ Parkin but that I replaced him. That is due to a misunderstanding on her part. The hearing was never listed before REJ Parkin. When the file was transferred to the North West region a letter of 21 June 2018 informed the parties that REJ Parkin had directed that there would be a preliminary hearing to determine the time limit issue. The letter did not say that the hearing would be before him.

15. The original date for the hearing was 31 August 2018. As REJ he controls listing matters, and in that capacity decided that it would be postponed because of a lack of judicial resource. That was confirmed to the parties by email of 30 August 2018. Again that email was not intended to be an indication that REJ Parkin was going to deal with the hearing personally.

16. It was rearranged for Monday 15 October 2018. The electronic copy of the final cause list retained on the Tribunal's systems shows that it was allocated to me, and my name appeared on the cause list displayed on the public notice boards in Alexandra House. I introduced myself by name to the representatives at the start of the hearing, as I do at every hearing. The claimant did not tell me that she expected REJ Parkin to be hearing the case. Had she done so I would have explained the position. This provides no grounds for reconsidering my judgment.

17. Further, in her email of 8 January 2019 the claimant appears to suggest that the hearing was conducted by REJ Parkin not by me. That is simply incorrect. The claimant is unfortunately confused about this.

Lack of Concern

18. The claimant next complains that I showed no concern for the fact she had been unwell, and did not enquire how she got to Manchester, despite the medical evidence in the bundle.

19. At the start of the hearing I had not read the bundle of documents, but only the Tribunal file. After an initial discussion lasting about 15 minutes I adjourned to read the documents, and the hearing resumed about half an hour later. I was concentrating on the factual and legal issues with which I had to deal, and I regret if the claimant was offended by what she wrongly perceived as a lack of concern on my part for her wellbeing. Had she shown any signs of being injured or unwell during the hearing I would have raised that with her.

Conduct of Mr Hills

20. The claimant complains about the way Mr Hills conducted the case for the respondent. Part of my role was to ensure that the questioning remained appropriate and I was satisfied that this was the case. I do not recall any "badgering" of the claimant, outbursts or improper accusations on his part.

21. The claimant also alleges that I "conferred with Mr Hills". I did engage in discussion with Mr Hills, as indeed I did with the claimant, but I took care to explain

to the claimant what was being discussed if it was not absolutely plain. I had no contact with Mr Hills save during the public hearing in front of the claimant.

Medical Evidence

22. The claimant suggests that I disregarded the medical evidence. On the contrary I was careful to take it into account. I took account of the letter from her General Practitioner in June 2018 - see [31] and [39].

Bereavements

23. The claimant suggested that I was “unkind and cruel” in relation to her bereavements. I reject that contention. I acknowledged the significance of the bereavements at [31] and took their impact on the claimant into account at [41]. I recognised the “very difficult circumstances” affecting the claimant at the time at [44].

Timescales

24. In a section of her reconsideration application headed “timing of appeal” the claimant suggests that I prevented her checking her mobile telephone and that it would have made a difference to my understanding about the timings.

25. In fact the timescale she sets out there was broadly the timescale I understood her to be putting forward. I found as a fact that she contacted ACAS again in mid February 2018 [24] and that she did not get any advice until the very end of March 2018 [25].

Other Factual Issues

26. The claimant also relies on discussions about whether events had been documented and the effect of the car incident in November 2017. The points raised by the claimant were points that I took into account in making my decision.

Conclusions

27. Broadly, therefore, the points raised by the claimant in her application of 31 October 2018 either provide no grounds for reconsideration of the judgment, or were matters which were taken into account at the time.

28. That leaves the overarching allegation of bias on my part, which is not a matter which is suitable for reconsideration by the Judge who made the decision. The claimant will have to pursue that issue in her appeal.

29. For these reasons I am satisfied that despite the points made by the claimant there is no reasonable prospect of the original decision being varied or revoked.

30. I reject the application for reconsideration.

Employment Judge Franey

18 January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

23 January 2019

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