



EMPLOYMENT TRIBUNALS

Claimant: Mr J Morley

Respondent: B Conway (Tail Lifts) Limited

Heard at: Manchester

On: 17 January 2019

Before: Employment Judge Feeney

REPRESENTATION:

Claimant: Not in attendance

Respondent: Mr A O'Neill, Solicitor

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the claimant's application dated 31 May 2018 for a reconsideration of the Judgment sent to the parties on 27 February 2018 is refused.

REASONS

1. I have considered the claimant's application for a reconsideration and the correspondence between the Tribunal, the claimant and his mother since that application in coming to my decision.

The Law

2. Reconsideration of judgments is contained in rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says that:

“(70) A Tribunal may, either on its own initiative or on the replication of a party, reconsider any judgment where it is necessary in the interests of

justice to do so. On reconsideration the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.

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

Process

- (72) An Employment Judge shall consider any application made under rule 71:
- (i) If the Judge considers there is no reasonable prospect of the original decision being varied or revoked the application shall be refused and the Tribunal shall inform the parties of that 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.
 - (ii) If the application has not been refused under paragraph (i) 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 (i), 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 representations.
 - (iii) Where practicable the consideration under paragraph (i) 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 (ii) shall be made by the Judge or, as the case may be, the full Tribunal which made the original which made the decision. Where that is not practicable the President, Vice President or Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, either shall direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part."

The Facts

3. A case management discussion was undertaken by Employment Judge Rice-Birchall on 8 December 2017. Mrs Goulden, the claimant's mother, attended on behalf of the claimant, and Mr A O'Neill on behalf of the respondent. At paragraph 6 of that Case Management Order it stated the case was listed for a further preliminary

hearing on 13 February 2018, and it listed four things that would be considered at that hearing. It also gave directions regarding the claimant providing medical information to the respondent. The issues to be considered were:

- (1) Whether the Tribunal had jurisdiction in light of the respondent named on the early conciliation certificate;
- (2) Whether the claim should be struck out as scandalous, vexatious or having no reasonable prospect of success, or whether a deposit order should be made; and
- (3) Whether the claimant was suffering from an impairment which amounted to a disability within the meaning of the Equality Act 2010 and/or that he was a disabled person within the meaning of the Equality Act 2010.

4. The case management minutes were sent out on 10 January 2018 and a notice of hearing was sent out separately stating that the issues set out in paragraph 6 of the 8 December 2018 Case Management Order would be considered on 13 February 2018.

5. There was further correspondence after this where the Employment Judge clarified the matters which needed to be complied with before 12 January 2018; this was following correspondence from Mrs Goulden. In addition, on 21 December Mrs Goulden sent an email to the Tribunal, whilst it did say she had received no paperwork it also referred to the hearing date as being 13 February. It appears from the file that the minutes we emailed on 10th January as Mrs Goulden asks for an extension "as we have only just received this request". However I am not certain they were sent to her. The details were, in any event, set out with some extensions and further explanation. by a letter from the Judge of 12 January.

6. On 30 January 2018 the respondent requested an Unless Order as the claimant, in their view, had not provided full medical records, and nothing regarding a Schedule of Loss nor an impact statement had been received as ordered by the Employment Judge on 8 December 2017. The date of the hearing is underlined in that request which also went to Mrs Goulden. A further order was made that this should be provided by 7 February 2018, failing which an application to strike out the claim for failure to comply with the orders of the Tribunal would be considered on 13 February 2018. A short statement was then provided by Mr Morley.

7. I heard the preliminary hearing on 13 February 2018. The claimant and/or his mother was not in attendance. As reiterated at paragraphs 6 and 7 of my written Reasons, we checked whether any communication had been received and waited 20 minutes but there was no communication from the claimant. Towards the end of the respondent's submissions the claimant had apparently rung and asked what time did the case start, but in view of the fact that notice of the hearing had been received I had decided to continue with the hearing.

8. In those written Reasons, which were provided on request to the claimant on 1 May 2018, I stated:

“Further, if the claimant did have a good reason for not attending he could apply for reconsideration.”

9. I struck out the claimant's claim for reasons set out in the conclusions in that decision.

10. A summary decision was sent out on 27 February 2018 and the claimant requested reasons via his mother on 27 February 2018. There was a delay in providing written reasons, which were sent out on 9 May 2018. On 25 April 2018 Mrs Goulden had contacted the Tribunal.

11. On 23 May 2018, having received the written Reasons, Mrs Goulden wrote to the Tribunal saying. “Can you please advise what the time limits are on appealing this written decision”. A reply was sent out on 31 May stating, “I refer you to the Tribunal's cover letter of 27 February” which sets out the rules on appealing. It was pointed out that, “an application for reconsideration is different and if you are seeking to make a reconsideration application you must do so within 14 days of the date the decision was sent to you”.

12. On 31 May 2018 Mrs Goulden wrote in to the Tribunal:

“We requested the written reasons for strike out. The main reasons were the claimant's evidence of his disability. We were not advised that the GP's medical report stating his disability was not sufficient. We were also not advised his disability had to be diagnosed by a relevant Health Department. The claimant was referred by his GP to Mental Health Services. He was diagnosed with PTSD which is a disability. The GP has now accepted the claimant requires a different treatment by a psychiatrist. Furthermore, the evidence we requested from the ET by the college was never submitted. Therefore we find the evidence we feel would be supportive towards the claimant was not viewed. Moreover, the claimant feels he was not given the chance for his case to be heard correctly. Although we unfortunately missed out date due to circumstances we appreciate the Judge was only able to conclude in the defendant's favour. However, due to the reasons already stated the claimant is deeply saddened if he is unable to take his case further. Ultimately we are unsure if an appeal to a Higher Court is still applicable due to time limits. The EAT and the Judge are aware I have no qualifications in law and therefore I may have struggled on etiquette. However, the claimant was discriminated against by the defendant and we wish to seek further advice.”

13. On 11 June 2018 the claimant described the email of 31 May 2018 as their appeal. I have treated that email of 31 May 2018 as a reconsideration request. I wrote on 18 June 2018 requesting further clarification of the grounds for reconsideration and the reasons why the reconsideration request should be allowed out of time.

14. On 20 August 2018 the claimant said that they did appeal within the time limits and referred to the message they sent on the 23rd asking the Tribunal what the time limits for appealing the written decision were. I cannot accept that that was a reconsideration request, and I explained this on 23 September 2018.

15. I then wrote to the claimant, copied to the respondent, on 24 September 2018 and stated that I considered a reconsideration request was submitted on 31 May 2018 out of time, but further details were required, and I stated that I would consider whether to allow it outside the time limit if the claimant provided, by 1 October 2018, full details of the reasons why he did not attend the hearing on 13 February 2018 along with corroborative evidence.

16. On 1 October 2018 Mrs Goulden said that there was a serious incident involving Mr Morley and they wanted the deadline for providing the information postponed or extended. I extended it then to 8 November 2018. Mrs Goulden then said that they were going through a traumatic time and therefore I extended time again, setting out the questions that needed to be answered. I stated that by 19 December 2018 the claimant is to provide the following:

- (1) Reasons why he did not attend the hearing on 13 February 2018 with any corroborating evidence; and
- (2) Reasons why the application for reconsideration was late.

17. On 3 January 2019 Mrs Goulden emailed stating:

“All the information requested was sent some time ago. Furthermore, the service we approached, ACAS, in regards to the claim advised Mr Morley had a claim for discrimination. Can you advise why the EAT thinks there’s little chance of success if Mr Morley’s claim has not been heard. Due to ill health, there have been delays.”

18. There was a further email the same day which said:

“We emailed the service within the timescale to ask for on appeal on the basis our claim was not heard by the Judge due to non attendance at the preliminary hearing. We was [sic] assured on that day of the PH that everything would be posted out by a letter, however it was not. Consequently I was directed by my own notes where I had noted an incorrect time. Furthermore I requested for an appeal as this was in fact my error and not Mr Morley’s. This was done via email. Can you advise me if Mr Morley can have legal aid to support his claim as I feel overwhelmed with the process whilst not in good health.”

Conclusions

19. Firstly, the claimant’s application for a reconsideration is out of time, the claimant ‘s explanation of this I think at its highest is that without legal advice the situation was not understood. However, details of the time period for applying for a reconsideration are sent out with the judgment and written reasons. The claimant understood enough to ask for written reasons. I even referred to the possibility of asking for a reconsideration in the judgment. In these circumstances I do not extend time for the submission of the reconsideration.

20. If I am wrong on that I have considered whether the reasons given by the claimant for the original non attendance are persuasive and reasonable. The reason is that Mrs Morley possibly put an incorrect note in her notes. She says the details of

the case management were not posted out, however she was clearly aware of the date from her email of 21 December and she was reminded of this by the respondent in their email of 30 January. No persuasive reason having been given for the failure to attend I would refuse the application for the reconsideration as it would not be in the interests of justice.

21. Finally in respect of the claimant's case he had full opportunity to present written evidence regarding his disability and failed to produce cogent evidence. In my view his attendance would have made no difference to my finding that there was insufficient evidence to show he had a disability within the meaning of the Equality Act 2010, on which his claims were based. He would not have been allowed to elaborate on his impact statement and as I have said he had had ample time in which to produce his evidence. Accordingly, in any event, I would dismiss the reconsideration request as having no reasonable prospect of success and it would not be in the interests of justice to allow the reconsideration as it would amount to 'a second bit of the cherry' undermining the principle of finality of judgments.

Employment Judge Feeney

Date: 21st January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24th January 2019

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