



THE EMPLOYMENT TRIBUNALS

Between

Claimant: Ms M Baker

Respondent: Sussex Police

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON AN APPLICATION FOR RECONSIDERATION UNDER RULE 70 OF THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE 2013

JUDGMENT

It is the judgment of the Tribunal in accordance with rule 72(1) that the application by the Claimant dated 23 November 2018 for a reconsideration of the costs order dated 5 September 2018 be refused on the ground that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

- 1 The provisions of the Employment Tribunals Rules of Procedure 2013 relating to the reconsideration of judgments are as follows:

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.

- 2 The Claimant applied for a reconsideration by email on 23 November 2018 which was within the time limit prescribed by rule 71. The Respondent's solicitors commented on that application on 27 November 2018. Rule 71 provides that the first step is for the Judge to consider whether the application has any reasonable prospect of success. I have not therefore taken into account the comments made by the solicitors for the Respondent.
- 3 I emphasise that the sole ground for granting a reconsideration is where the interests of justice require it. One of the elements of administering justice is that there should be a finality to litigation. If a first instance court or tribunal makes an error of law then there is a right of appeal. The simple fact that a party believes that the decision is wrong or unfair does not by itself give rise to the exercise of the discretion to allow a reconsideration.
- 4 The Claimant raises various points. Several of them relate to her finances. The Tribunal is not obliged to take into account the financial position of a party when considering a costs order. As pointed out in paragraph 11 of the reasons for the Order the Claimant had provided some financial information. We were not satisfied that full information had been provided. It is now too late to reopen the topic.
- 5 In paragraph numbered 1 the Claimant states that the claim was pursued in good faith and with a reasonable prospect of success. We did not find that the claim was not pursued in good faith. We 'found fairly and squarely against the Claimant' in respect of all allegations subject to two exceptions. The Claimant may think that our findings were erroneous, but as stated above that is not sufficient to justify a reconsideration.
- 6 Criticisms are made of Miss Lintner. That is not a matter with which this Tribunal can be concerned.
- 7 The Claimant refers to amendments causing the case to become more complex and that costs incurred by the Respondent as a result should not be allowed. Firstly it is not clear to me what the Claimant means. Secondly the Claimant had the opportunity to make the point in her written submissions and also to attend the costs hearing to explain to the Tribunal what she meant. She did neither.
- 8 Paragraph numbered 4 appears to be a challenge to the Tribunal's findings and not the proper subject for reconsideration.

- 9 Finally, the Claimant referred in her paragraph numbered 5 to the paragraph numbered 9 in our reasons for the Order. The point relates to the provision of witness statements. What the Tribunal noted was that the Claimant was given a costs warning after the trial bundle had been agreed and after the Respondent had supplied the witness statements to her. She therefore decided to proceed with the hearing in the full knowledge of the evidence to be adduced. The Claimant is effectively saying that she did not accept that the statements were true. She was entitled to hold that view. However the Tribunal made its findings of fact. Disagreement with those findings is not sufficient to justify a reconsideration.

Employment Judge Baron

27 December 2018