



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mrs B Skarbeck-Cielecka

and

**Holly Rise Consultants Limited T/a
Bluebird Care (Eastbourne and
Wealden)**

JUDGMENT

The Claimant's application for reconsideration of the Judgment dated 2 January 2019 is refused.

REASONS

- 1 Following a Preliminary Hearing on 20 November 2018 and the production of my Judgment from that hearing, dated 2 January 2019, the Claimant sent emails dated 11, 14, 18 and 20 January 2019. The email dated 14 January 2019 contained the Claimant's application for reconsideration of my Judgment. The Claimant attaches a number of documents to that email including a receipt for postage, some correspondence and 5 pages of a document headed Gross Pay Advice.
- 2 I have now had an opportunity to read the Claimant's application and attachments, the entirety of the emails referred to above, my judgment dated 2 January 2019, the Case Management Order of the same date and my notes of the hearing.
- 3 I have also had regard to Rules 70 – 72 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1.
- 4 Pursuant to Rule 70, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. Rule 71 provides that 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 that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

- 5 Pursuant to Rule 72 if the Judge considers that 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 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.

- 7 I therefore now turn to the grounds for reconsideration, as set out by the Claimant in her application, to consider whether there is a reasonable prospect that it will be necessary in the interests of justice to reconsider the judgment.

- 8 In her email of 14 January 2019 the Claimant refers to a letter from the Respondent dated 18 December 2017. She describes it in the following terms, *'it is a letter from my employer dated 18/12/2017 in which he eventually sent me Gross Pay Advice.'* The Claimant submits that she was not able to check if she was paid correctly or not until she got the document in December 2017. She goes on to state,

'In my personal opinion I wasn't in a position to set out and present my claim to the Tribunal till 18/12/2017, when I eventually received my last Gross Pay Advice from the Respondent and for that reason I needed some advice from Citizen Advice Bureau.'

- 9 This account from the Claimant is entirely different from her evidence given at the Preliminary Hearing on 20 November 2018. During the course of the hearing the Claimant told me that she had received her payslip in early August 2017 and her gross payslip advice later in August 2017. I accepted this evidence and the fact that the Claimant required her gross payslip advice in order to formulate her claim. I therefore concluded that she was in receipt of the necessary information to particularise her claim by the end of August 2017.

- 10 The Preliminary Hearing on 20 November 2018 was listed to consider whether the Tribunal had jurisdiction to determine the Claimant's claims that the Respondent made unauthorised deductions from her wages, taking into account the statutory time limit. The Claimant understood what the hearing was about and confirmed this to me when, at the start of the Preliminary Hearing, the Respondent made an application to extend the ambit of the hearing to include consideration of whether the Claimant's discrimination claims were also presented out of time. The Claimant told me that she was only prepared to deal with the unlawful deductions from wages claim, as had previously been identified to her in correspondence from the Tribunal and we therefore proceeded with the hearing on that basis.

- 11 The Claimant's claim for an unlawful deduction from wages was presented outside the primary limitation period. In my Judgment, dated 2 January 2018, I concluded that it was reasonably practicable for the Claimant to present the claim before the end of the relevant period of 3 months.
- 12 The Claimant's application for a reconsideration appears to be on the basis that her evidence during the hearing was incorrect. As noted above, she now submits that she did not actually receive the gross payslip advice until she was sent the Respondent's letter dated 18 December 2017. This is essentially what the Claimant said in her email sent to the Tribunal the day after the Preliminary Hearing (21 November 2018), which I referred to in my Judgment of 2 January 2019 at paragraph 7.3.
- 13 Having considered the points raised by the Claimant and the entirety of her application, it is my view that there is no reasonable prospect of the original decision being varied or revoked, on the basis of the interests of justice, and I therefore refuse the application.
- 14 Whilst I note and acknowledge the content of the Claimant's email application and the fact that she now says she received the gross payslip advice with the letter in December 2017, I do not consider that this submission discloses any proper ground for a reconsideration.
- 15 The Claimant asks me to reconsider the Judgment on the basis that she now gives an entirely different account, about when she received the gross payslip advice, to the evidence she gave in the Tribunal. As detailed above, the Claimant confirmed at the start of the Preliminary Hearing her full understanding of the issue to be determined by the Tribunal, her evidence at Tribunal was given under oath (with the full support of an appropriate interpreter) and on several occasions, I took time to confirm with the Claimant her full understanding of the questions being put to her. She confirmed her complete understanding to me. At no stage did the Claimant seek to adjourn the hearing.
- 16 In these circumstances it is not in the interests of justice for the Judgment to be varied or revoked. To do so would be to give the Claimant a second bite of the cherry or, in other words, a second opportunity of giving evidence on the matters considered at the Preliminary Hearing. As stated in my earlier Judgment (see paragraph 7.4 of that Judgment), it was to be expected that the Claimant would provide all relevant evidence on the day of the Preliminary Hearing, both documentary and oral. In my judgment, it is not in the interests of justice to extend to the Claimant additional opportunities to change her evidence presented to the Tribunal by way of this application for a reconsideration.
- 17 I have concluded that there is no reasonable prospect of the original decision being varied or revoked, on the basis of the interests of justice, and I therefore refuse this application.

- 18 The full merits hearing in this case commences on **26 March 2019** and remains listed for 4 days.

Employment Judge Harrington
19 February 2019