



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Burrett

Respondent: Triodos Bank NV

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is granted and the decision to strike out the claimant's claim of breach of duty of care in respect of the provision of a reference is revoked.

REASONS

1. The claimant has applied for a reconsideration of the judgment made on the 18 January 2019 which included a decision to strike out her breach of duty of care claim in relation to the provision of a reference. Written reasons were provided on 6 February 2019 and sent to the parties on 7 February 2019 ("the Judgment"). The grounds of the claimant's application were set out in her email to the Tribunal dated 6 February 2019, and further in emails dated 4 March 2019, 5 March 2019 and 20 March 2019.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

4. The grounds relied upon by the claimant are that the Tribunal has not determined the date of termination of employment. She contends, relying on the Supreme Court decision in the case of **Societe Generale, London Brance v Geys [2012] UKSC 63**, that her contract did not come to an end until such time as she indicated her consent to its termination. The claimant has asserted, based on that argument, that her contract did not terminate until after the date on which the respondent provided the reference which was the 28 September 2018.
5. The claimant's breach of duty of care claim in respect of the 28 September 2018 reference was struck out on the basis that the claimant's reference was given after the date of submission to the Tribunal of the claimant's claim for breach of contract on the 10 September 2018, which gave as the employment termination date the 8 September 2018. Breach of contract claims are within the jurisdiction of the tribunal by virtue of the Extension of Jurisdiction Order 1994 (EJO), if they arise out of or are outstanding on the termination of employment. The Judge concluded that there was an element of conflict in bringing a claim under the EJO but subsequently contending that the date of termination was at a date later than the date of presentation of the claim.
6. It is however open to the Tribunal to allow matters occurring after the date of submission of the claim to be considered as part of the existing claim and it is therefore possible that if the Tribunal were to conclude that the date of the termination of the claimant's employment was later than the date of the provision of the reference, the Tribunal might have jurisdiction to hear the claimant's claim for breach of duty of care in relation to the 28 September reference.
7. The respondent was asked to comment on the claimant's application for reconsideration but did not do so. The parties were asked to provide their views on whether the claimant's application could be determined without a hearing. The respondent emailed its consent to the matter being dealt with without a hearing. The claimant's view was that a hearing was required. The Judge concluded that she had enough material on which to base her decision without the need for a further hearing.
8. The Judge concluded that it was in the interests of justice to revoke the judgment in so far as it struck out the claim for breach of duty of care in relation to the provision of the reference on the 28 September 2018.
9. The Judge directs that as the breach of duty of care claim relating to the provision of the reference can only proceed if the Tribunal concludes that the date of termination of employment is later than the date that the reference was provided, that claim should be considered after

determination of the claim for notice pay which will require a determination of the date of termination of employment.

10. The case will be listed with a time allocation of one day. Notice of hearing will be provided in due course.
11. The parties are asked to cooperate in complying with the case management orders given in the Order dated 18 January 2019 and agreeing new dates for compliance where necessary.

Employment Judge Mulvaney

Dated 2 May 2019