



THE EMPLOYMENT TRIBUNALS

Between

Claimant: Mr B Sidell

Respondent: Stuart de Frain-Ford

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 May 2018 for a reconsideration of the judgment 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 By a judgment of 20 April 2018 the claim was dismissed. The Claimant did not attend that hearing. The Claimant has sought a reconsideration of that judgment. Representations have been made on behalf of the Respondent opposing that application, but I have not taken those representations into account by reason of the provisions of rule 72(1).
- 3 The reasons for the dismissal of the claim were brief and as follows:
 - 1 On 14 December 2017 the Claimant presented a claim to the Tribunal naming the Respondent as Stuart De Frain-Ford. He provided an ACAS early conciliation certificate number R186872/17/41. That certificate names the prospective respondent as Surrey Fire and Rescue Service.
 - 2 Section 18A of the Employment Tribunals Act 1996 provides that before a claim may present an application to the Tribunal in respect of 'relevant proceedings' he must provide ACAS with prescribed information. The claims being made are of disability discrimination, and of harassment and bullying. Insofar as the Tribunal has the jurisdiction to consider the claims, they are 'relevant proceedings'.
 - 3 The Early Conciliation Rules of Procedure provide that the prescribed information includes the prospective respondent's name and address. It is apparent that the Claimant did not provide ACAS with the Respondent's name and address.
 - 4 In my judgment these proceedings are a nullity and by reason of the failure of the Claimant to follow the early conciliation procedure they should not have been served on the Respondent in the first place.
- 4 The principal basis for the reconsideration application, as I understand it, is that I should have amended the claim to name Surrey Fire and Rescue Service as a respondent, either as an additional respondent or in substitution for Mr de Fraine-Ford. I do not consider that that would have been appropriate for two reasons. The first is that the point about a failure to comply with the ACAS early conciliation process had specifically been raised in the response form ET3, and the Claimant had had an opportunity to seek to resolve the procedural difficulty before the hearing. He did not make any application to amend the claim form, nor to obtain another ACAS early conciliation certificate. The second reason is that it is not the function of the Tribunal to correct the failure of the Claimant to follow the procedure provided for by statute.
- 5 The Claimant has also said that he did not receive the letter notifying him of the hearing. I do not know if that is correct or not. The Tribunal clerk telephoned him at 12.15 pm approximately and my note is that the Claimant said that he had learned about the hearing on the preceding

evening, and that he was not able to come to the hearing. No application for a postponement was made.

Employment Judge Baron

Date: 29 June 2018