EMPLOYMENT TRIBUNALS

Claimant: Mrs L M Salvador

Respondent: T & A Textiles and Hosiery Limited

Heard at: Manchester **On:** 28 June 2019

Before: Employment Judge Hill
(In Chambers)

JUDGMENT ON RECONSIDERATION

The respondent's application dated 3 June 2019 for reconsideration of the Judgment sent to the parties on 21 May 2019 is refused.

REASONS

1. After considering the respondent's application for reconsideration of the Judgment there is no reasonable prospect of the original decision being varied or revoked. I have taken into consideration the contents of the respondent's application and consider that the respondent has been unable to establish that the Tribunal made an error of law or that any of the conclusions on the facts were perverse.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.

3. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to re-open matters heard and decided unless there are special circumstances such as a procedural mishap, depriving a party of a chance to put his case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The Application

4. By way of a written application dated 21 May 2019 the respondent sought a reconsideration of the Judgment of the Tribunal where the Tribunal found that the claimant's claim for direct discrimination on the ground of sex was well-founded and succeeded, the claimant's claim of pregnancy and maternity discrimination were well-founded and succeeded and the claimant's claim for automatically unfair dismissal on the grounds of her pregnancy/childbirth was well-founded and succeeded. The claimant's claim of unlawful deduction of wages was well-founded and succeeded, and that the respondent was ordered to pay compensation in the sum of £20,407.77.

5. The application largely focused on the respondent's disagreement with the conclusions of the Tribunal and raises issues of dispute in respect of facts and not law.

6. The respondent, however, does raise some procedural points in respect of alleged applications made to the Tribunal which were not dealt with; the contents of the bundle and an "amendment" to the ET1 in respect of the relevant section of the law referred to in respect of pregnancy and maternity discrimination.

7. The other issues raised in the reconsideration application referred to findings of fact made by the Tribunal, and whilst the respondent may not agree with the Tribunal's decision the respondent has not set out any evidence that would show that the conclusions drawn by the Tribunal on the facts were perverse. I have, therefore, set out below my response to the procedural issues raised.

The Bundle

8. At bullet point 1 of the respondent's application for reconsideration the respondent states that the bundle was not agreed between the parties and that the respondent had requested documents to be included in the bundle that were not included. Further the Respondent states that the bundle did not consist of 483 pages but 289 pages and that the respondent had provided the Tribunal with an alternative itemised index.

9. I have reviewed the bundle and the notes taken at the hearing, in particular the discussions that took place at the commencement of the hearing with the claimant's and respondent's representatives in respect of confirming the documents and witness statements that the Tribunal had before it. The notes record that that the Tribunal referred to there being a bundle of documents (page numbers 1-483) in addition to witness statements and a CD containing the transcript of the telephone conversation. There was also a List of Issues that had been prepared by the claimant and handed to the respondent that day, and the Tribunal notes show that the only query raised by the respondent was in respect of the ET1 and an error referring to section 17 instead of section 18 (referred to below).

10. However, I have seen in the Tribunal file that the respondent sent an email to the Tribunal on 7 March 2019 attaching a revised bundle index. Whilst I accept that there may have been some mis-numbering in the bundle and/or duplications of documents, this had no material effect on the Tribunal's decision. I therefore do not

consider that allowing a reconsideration on this ground would mean that the Tribunal would be likely to change its decision.

Interlocutory Applications

11. At bullet point 2 of the respondent's application the respondent states that there were interlocutory applications that should have been considered by the Tribunal either prior to the hearing or on the day of the hearing, and that the Tribunal has given no reasons as to why the Tribunal did not consider the applications. In addition, in the last substantive paragraph of the application the respondent states that it sought specific discovery by way of an interlocutory application of any applications of any enquiries or communications made by the claimant with the DWP.

12. I have reviewed the Tribunal file and note that the respondent made an application for a reconsideration of a costs order on 20 September 2018. This application was refused by Employment Judge Robinson and was sent to the parties on 26 October 2018. I also note that there was an email on the file dated 21 September 2018 from the respondent to the claimant's representative which amongst other things states that if the claimant did not respond to that email, the respondent would make an application for a strike out. This email was not responded to by the Tribunal: it was not addressed to the Tribunal and I can find no applications on the file in respect of a strike out application in or around September 2018 or thereafter.

13. In respect of the specific application for disclosure, again I can find no evidence on the Tribunal file that any application was made. I have seen and read the email from the respondent to the claimant's representative on 24 September 2018 which the Tribunal was copied into, where the respondent seeks disclosure of documents, but this is not a specific disclosure application to the Tribunal. I therefore do not accept that there were any interlocutory applications that were not dealt with by the Tribunal prior to the substantive hearing.

14. It is accepted that the respondent raised issues regarding wanting documents from the claimant in respect of any claims or communications she had had with the DWP during the hearing, however no application had been made prior to the hearing and the Tribunal therefore considered that making an application at the date of the hearing was not appropriate (although no application was actually made), and secondly that it was not relevant to the case that the Tribunal was hearing.

Amendment to the ET1

15. At bullet point 3 of the respondent's application the respondent refers to the claimant's ET1 dated 17 May 2018 where she brings claims of direct discrimination on the grounds of sex and pregnancy and maternity discrimination. The ET1 makes reference to section 17 of the Equality Act 2010 which concerns discrimination in non-work cases. The respondent suggests in its application that (a) the Judgment is wrong at paragraph 14 and paragraph 3 by referring to section 18 of the Equality Act 2010 and (b) that the evidence given by the claimant as to why it had been pleaded incorrectly was that she did not type the ET1 and that it was her solicitor. The respondent argues that as her solicitor was not called to be cross examined the claimant's evidence was hearsay as she could not answer for the author of a

document i.e. her solicitor. The respondent also suggests that any amendment to the ET1 would have needed an application to amend to have been made by the Claimant and a decision on whether permission to amend would be have been granted.

16. I have looked at the notes of the hearing and in particular notes relating to issues raised by the respondent on the first day of the hearing. The note show that the respondent made reference to the error in respect of section 17 on the morning of the first day. Miss Jones, counsel for the claimant, stated that a mistake had been made and the reference should have been section 18. There was also a discussion between the parties and the Tribunal about the protected period in respect of a section 18 claim wand the parties agreed to discuss this further during the adjournment.

17. The Tribunal adjourned in order to read the witness statements and documents and reconvened again at 12 o'clock. Further notes record a discussion in respect of this issue and there is a note recording that the parties had discussed the issue prior to coming back into the hearing room and agreed that the protected period starts from when pregnancy commenced and not from the date of maternity leave. No further issues were raised by the Respondent in respect of the error in referring to the wrong section. I find that the parties agreed the identification of the correct section.

18. The second point raised by the respondent in (b) above is in respect of cross examination of the claimant's solicitor. Tribunal notes show that there was some cross examination of the Claimant in respect of another error in the ET1 which was referred to in the Judgment at paragraph 54, where the claimant stated that this had been an error by her solicitor in typing the ET1, but this does not relate to the question of whether this was a section 17 or a section 18 claim. The notes do not record any cross examination of the Claimant in respect of this particular issue. I find that there was no reason for the solicitor to be in attendance and that this particular issue was not raised at the hearing.

Conclusion

19. In view of the above, and the fact that the other issues raised in the respondent's application refer to the respondent disagreeing with the conclusions of the Tribunal, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Hill

Date 29 July 2019
JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 August 2019
FOR THE TRIBUNAL OFFICE