



THE EMPLOYMENT TRIBUNALS

BETWEEN

Ms Elizabeth George

Claimant

and

Pearson College Limited

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL UPON THE CLAIMANT'S APPLICATION FOR RECONSIDERATION

JUDGMENT

The Claimant's application for reconsideration of this Tribunal's judgment of 24 July 2019 sent to the parties on 25 July 2019 is refused as the application was made outside the 14-day time requirement of Rule 71.

REASONS

1. The Claimant has applied by letter dated 7 August 2019 for a reconsideration of the judgment I made in her case at the public preliminary hearing on 24 July 2019 whereby I struck out all her claims pursuant to Rule 37(1)(c). That preliminary hearing had been ordered by Employment Judge Snelson at a preliminary hearing (case management) conducted on 10 June 2019 to determine both the Respondent's strike out and / or deposit order applications and any additional applications by either party. If the claims survived the strike out application, then the issues for determination at the final hearing needed to be determined as well as outstanding case management points.
2. The Claimant did not attend that hearing and, further, she did not follow up on the arrangements that had been set in motion by Employment Judge Snelson for the purpose of allowing her to participate in the hearing by video conference.
3. In her absence, I first considered the Claimant's application made that morning in a letter emailed to the Employment Tribunal at 0923 hours. In that letter, the Claimant asked for three things:
 - a) A stay "due to High Court proceedings"
 - b) Rule 52 discontinuance

- c) That the Respondent's ET3 and complete defence should be struck out for dishonesty.
4. I rejected the application for a stay on the basis that there appeared to be no High Court proceedings which gave rise to the application made by the Claimant for a stay. Notwithstanding that her letter seeking the stay extended into 21 pages, the Claimant had provided no information therein of any detail of the High Court proceedings that she argued should warrant the Employment Tribunal approving a stay. Ms Masters advised that the Respondent was unaware of any proceedings although it was acknowledged that the Claimant had served what she described as being a "Pre-action Protocol for Defamation & Letter of Claim" dated 10 July 2019 on five individual employees of the Respondent. That letter, in its penultimate paragraph, gave the recipients 10 days within which to acknowledge the letter and a deadline of 4 p.m. on 23 July 2019 for "your full defendant's response". That suggested to me that proceedings, were they to have been issued because of the failure to the recipients of the letter to provide a response, would not have been served by 10.00 a.m. on the day of the hearing.
5. The Claimant in her application for reconsideration – a letter of 21 pages – attached an N1 Form which shows that proceedings had indeed been issued in the Queen's Bench Division by her against the Respondent and four of the five employees who had been the recipients of her letter of 10 July 2019. This indicates her claim had been given the number QB-2019-002639. It bears the date stamp of the QBD showing 24 July 2019, but the issue date is shown as having been corrected in manuscript from an original printed 24/06/2019 to 19/7/19. The Claimant explains in her letter of 7 August 2019 that she originally put the date of 24/06/2019 on the claim form which she then sent to the High Court by Royal Mail "Sign For" post. It is not clear to me whether the Claimant, before she sent the claim form, substituted the issue date of 19/7/19 for the printed 24/06/2019 or whether the substitution was made in the QBD office.
6. The application for reconsideration suggests that there is a material difference in the factual background against which I refused the stay. However, before getting into the detail of the Claimant's application and giving consideration as to whether there be any reasonable prospect of my decision being varied or revoked, I must have regard to the issue of time.
7. I remind myself of the Rules relating to Reconsideration:

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.

8. My decision was sent to the parties on 25 July 2019. That was the same day as the Claimant emailed the Tribunal attaching thereto her letter of 24 July 2019 which she had sent the previous day and which was taken into account when I delivered judgment. An acknowledgment that such was the case was sent to the Claimant on 12 August 2019 as an attachment to by Mr Priyam Sukul, an Administrative Officer of the Tribunal, at 14:43.
9. The application of the Claimant for reconsideration is dated 7 August 2019 but was only sent as an attachment to the Claimant's email of 12 August 2019 at 1636 hours. The body of that email contains a message addressed to "Dear Regional Chairman" and "Dear Sirs" of three substantive paragraphs. This message appears to be replicated twice more so that the whole message appears three times. The email itself is a reply to the message that was sent by Mr Sukul. However, the time that is recorded for the message Mr Sukul sent is 09:42:45 GMT - 4. I apprehend that, with British Summer Time taken into account [GMT + 1], this must be the equivalent in the GMT - 4 time zone of the time of Mr Sukul's email – i.e. 14:43.
10. In the first paragraph of the Claimant's email, she writes:

I applied to withdraw my ET claim because one commenced High Court claims and the ET would not approve a claim against judicial hierarchy principles. Hence, please find the attached my application for reconsideration emailed last week ...
11. The difficulty with that last statement is there is no evidence on the file of the Claimant having emailed an application for reconsideration in the week previous to Monday 12 August 2019. And the fact is that, if the date of the Claimant's application for reconsideration is, indeed, 12 August 2019, then it is out of time, as 12 August is 18 days after 25 July.
12. There is at Rule 5 a provision permitting the extending of time:

5. The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.
13. The Claimant has not made an application to extend time. Indeed, in her email of 12 August 2019, she has asserted that she was repeating the exercise of attaching her application for reconsideration “emailed last week” which, if it had been emailed, may or may not have thus been an application made within 14 days of the date on which my decision was sent to the parties.
14. Given the absence of any indication on the file that there was any email sent to the Tribunal in the week preceding 12 August and given that the Claimant’s email of 12 August purports to reattach her application for reconsideration as opposed to forwarding her email of the previous week along with its attachment, I form the view on the balance of probabilities that the Claimant did not send an email to the Tribunal in the week preceding 12 August. That being the case, her assertion that she “re-attached” her application for reconsideration appears to me to be false. It does not pre-dispose this Tribunal to deciding on its own initiative to extend the time limit specified in the Rules.
15. Indeed, when considering whether to extend time or not, I bear in mind the basis upon which I determined that the claims made by the Claimant should be struck out in their entirety. That basis was because I was satisfied that the Claimant failed to comply with a number of orders of the Tribunal and I did not think that a fair trial was possible. It appears to me that the way the Claimant has presented her application for reconsideration shows that she failed to comply with the time requirement of Rule 5.
16. I therefore refuse the application for reconsideration of my judgment of 24 July 2019 on the basis that it was made outside the 14-day time requirement of Rule 71.

**EMPLOYMENT JUDGE - Stewart
On: 14 August 2019**

DECISION SENT TO THE PARTIES ON

16/08/2019

FOR SECRETARY OF THE TRIBUNALS