



EMPLOYMENT TRIBUNALS

Claimant Respondent

Mrs P Harris v Northamptonshire County Council

Heard at: Cambridge On: 11 October 2019

Before: Employment Judge Ord

Appearances

For the Claimant: Mr Harris, Lay representative

For the Respondent: Ms Ismail, Counsel

JUDGMENT on RECONSIDERATION

1. Subject to the deletion of Paragraph 27 of the Judgment and its replacement by the text as set out below, the Claimant's application for reconsideration of the Judgment fails and the original Judgment is confirmed.

2. Paragraph 27 of the Judgment is to be replaced with the following words,

"Evidence was also heard from Ms Helen Cara, Personal Assistant to Mr Harris; she attended a grievance meeting with the Claimant on 5 October 2015."

REASONS

1. Any party to the proceedings may apply for reconsideration of a Judgment under Rules 70 – 72 of the Employment Tribunal Rules of Procedure 2013.

2. Under Rule 70: reconsideration may take place where it is necessary in the interests of justice to do so.

3. Under Rule 72: if an application for reconsideration has not been rejected on the basis there is no reasonable prospect of the decision being varied or revoked, the application should proceed to a hearing.
4. The Reserved Judgment in this case is dated 16 November 2017 and was sent to the parties the following day. The application for reconsideration was received on 27 November 2017, ten days later.
5. Under Rule 71: except where an application is made in the course of a hearing, it must be made in writing within 14 days of the date in which the written record of the original decision was sent to the parties and shall set out why reconsideration of the original decision is necessary.
6. The Claimant in this case sought an extension for the provision of that information until 10 December 2017, but no such reasons were received. Therefore, on 13 January 2018 the Tribunal gave the Claimant a final seven days to set out the reasons why reconsideration was necessary, in writing, and they were received on 19 January 2018.
7. The Respondent was given the opportunity to comment thereon as they are entitled to under the Rules and thereafter a Reconsideration Hearing was fixed. There had been some problems with listing this hearing and it eventually came before me today.
8. The written application on behalf of the Claimant sets out at length criticisms of the Respondent's treatment of the Claimant, of their conduct in these proceedings and the decision of the Employment Tribunal. I had been careful to point out to the Claimant, who is not legally represented, the very limited extent to which those matters could be relevant to the issue of reconsideration and that the purpose is not to have a second bite of the cherry on any issue which has already been determined by the Tribunal.
9. The Claimant called into question the identity of the Respondent today, but this had already been dealt with in the Judgment. Paragraphs 1, 2 and 3 of the Judgment refer to this. On behalf of the Claimant the current state of the school, including staff changes and the financial situation of Northampton County Council were advanced as relevant. They are not. The issues before me in the original hearing were those clearly set out in Paragraphs 4 – 10 of the original Judgment.
10. The Claimant, today, referred to the Respondent being in breach of the Tribunal's Unless Order dated 4 November 2016 which required witness statements to be exchanged by not later than 12 noon on 7 November 2016. I am told that the Respondent's witness statements were not received by the Claimant until later that day.

11. Examination of the Tribunal's files do not disclose any previous complaint about this and the point was not made at the Final Hearing. The provisions of Rule 38 were not therefore complied with because the Tribunal did not know that there had been any breach of the Order. The failure was not brought to the Tribunal's attention at any stage before now, as far as I have been able to ascertain and it was certainly not raised at the hearing before me. Had it been, the Rules would have required the Tribunal to advise the Respondent that they were in breach of the Order and that their response had been struck out and give them 14 days to apply to set the Order aside.
12. In the circumstances, I am satisfied, first of all, that had such an application been made, it would have been granted because default of a matter of hours in complying with an Order which had then been subsequently complied with, given that this is a case where substantial allegations of detriment for making protected disclosures as well as constructive unfair dismissal was being made, should be heard on its merits. No prejudice was advanced on behalf of the Claimant as to the late disclosure. Therefore, had an application been made, it would have been almost certainly and had it come before me, I say it would, have been allowed. Further and in any event, this matter was not before the Tribunal at any stage and it is too late in the day to now raise it.
13. The fundamental complaint which was made today, is that in effect the Respondent had no good reason to place the Claimant in a capability process and that therefore the Claimant's complaint would succeed. This was fully dealt with in the original hearing and Paragraphs 95 – 103 of the original Judgment refer. Whilst I understand that the Claimant clearly feels that it was inappropriate and unfair for her to be placed into that process, the reasoning for it has been tested at the original hearing and the Tribunal has made findings in that regard. There is no basis upon which it would be in the interests of justice to reopen that argument.
14. Accordingly, save for the alteration to Paragraph 27 of the Judgment, the Application for Reconsideration fails and the original Judgment is confirmed.

Employment Judge Ord

Date: 14 October 2019

Case Number: 3402061/2015

7 November 2019

Sent to the parties on:

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For the Tribunal Office