THE EMPLOYMENT TRIBUNALS

BETWEEN

Ms Elizabeth George ***Claimant***

and

Pearson College Limited

Respondent

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

JUDGMENT

The Claimant's application for reconsideration of this Tribunal's judgment dated 14 August and sent to the parties on 16 August 2019 is not refused and it is directed that this case be listed for a hearing when the application can be further pursued.

REASONS

1. On 24 July 2019, at a preliminary hearing at which the Claimant did not attend, I struck out all her claims pursuant to Rule 37(1)(c). The Claimant then applied by letter dated 7 August 2019 for a reconsideration of that judgment – her first application for reconsideration. I considered the application and wrote a judgment refusing the application for reconsideration on 14 August, which judgment was sent to the parties on 16 August 2019. The Claimant has applied by letter dated 28 August 2019 for reconsideration of my refusal to accede to her first application for reconsideration of my judgment of 24 July 2019. I will refer to the application of 28 August 2019 as being her second application for reconsideration.

2. The basis upon which I refused the first application was that, on the evidence available to me, it appeared that the Claimant's application was made outside the 14-day time limit requirement of Rule 71. I wrote:

> 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.

3. The Claimant's letter dated 28 August 2019 extends over 31 pages and 164 paragraphs. To it, she attached copies of two emails from her that have been acknowledged apparently by the Tribunal. The first of these is dated 7 August 2019 at 1505 hours UTC [*Universal Time Coordinated*, the successor to Greenwich Mean Time - *GMT*] which appears to have received an acknowledgement of receipt from the Tribunal on 7 August 2019 at "00:53:24 GMT-4". The second email from the Claimant is dated 8 August 2019 at 0724 hours UTC to which is attached her earlier email of 7 August 2019 and the acknowledgment of receipt from the Tribunal.

4. I have checked with the administrative officer who handles the emails that come into the Tribunal and it would appear that the email of 7 August 2019 was received on that date together with her attachment. I remain puzzled as to how the acknowledgment of receipt from the Tribunal that the Claimant has produced is timed earlier than the email in respect of which it was acknowledging receipt. And I have not been able to explain as to how the copy of the Claimant's email of 7 August, along with a copy of the Tribunal's acknowledgment of receipt, failed to make its way onto the file.

5. Therefore, I accept that contention of the Claimant for which I was not able to find any evidence for when considering on 14 August 2019, on the basis of the file alone, that on 7 August 2019 she had made an application for reconsideration of my judgment of 24 July 2019.

6. Therefore, it is apparent that the basis for rejection of the Claimant's first application for reconsideration – that it was made outside the 14 day time requirement of Rule 71 – falls away given that the judgment of 24 July 2019 was sent to the parties on 25 July 2019 and thus the Claimant's application for reconsideration was made on the 13th day thereafter.

7. It follows that I must accept that, there must be more than a reasonable chance of my dismissal of the Claimant's first application for reconsideration being revoked. That raises the question as to the way forward. It seems to me that I must look at the Claimant's first application anew and consider whether, now that the time point does not determine the application, there is a reasonable prospect of the original decision being varied or revoked, see Rule 72(1).

8. At the start of my judgment of 14 August 2019, I had set out the background which had led to my judgment of 24 July 2019:

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.

9. This was the point at which, on the basis of the contents of the file, I concluded that the Claimant's application for reconsideration was out of time. So, given that the Claimant has satisfied me now that the application was in time, I will pick up where I left off.

10. It seems to me, on a reading of Halstead v Paymentshield Group [2012] EWCA Civ 524, that the Court of Appeal approved HH Judge McMullan QC's view that a letter before action should be treated as an indication that proceedings had been commenced in the High Court. If I am wrong about that, there would appear now to be evidence not before the Tribunal on 24 July 2019 that the Claimant had submitted an N1 form to the Queen's Bench Division which was initially dealt with on 19 July 2019 before being stamped with the seal of the Division on 24 July 2019. Whatever way one looks at it, the Claimant appears to have presented a claim form to the QBD ahead of the hearing before this Tribunal on 24 July.

11. As I had determined on 24 July 2019 that no High Court proceedings had yet been issued and am now persuaded that they had been, it is clear that I cannot say there is no reasonable prospect of my original decision being varied or revoked. Therefore, I do not refuse the Claimant's application and direct that the matter be reconsidered at a hearing at which both parties will have the opportunity of making their submissions on the issue being reconsidered.

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EMPLOYMENT JUDGE STEWART
On: 1 November 2019

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DECISION SENT TO THE PARTIES ON

4 November 2019

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FOR SECRETARY OF THE TRIBUNALS