



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Kalia

Respondent: Crowe UK LLP

DECISION

The claimant's application dated 13 June 2019 for reconsideration of the judgment sent to the parties on 31 May 2019 is refused.

REASONS

1. By email sent to the tribunal on 13 June 2019, the claimant applied for reconsideration of the judgment sent to the parties on 31 May 2019.
2. Under Rule 72(1) of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an employment judge considers that there is no reasonable prospect of the original decision being varied or revoked.
3. The claimant's application runs to some 51 pages, plus attachments. With the exception of the matter referred to in the paragraphs below, the vast majority of the application consists of: matters being raised which either were raised or could have been raised at the original eight day hearing; attempting to relitigate issues which were already considered at the original hearing; matters which are not relevant to the decisions reached by the tribunal on the issues; or a combination of these. The purpose of the reconsideration process is not to give parties the opportunity to simply relitigate a case that has already been heard and it would not be in the interests of justice to do so. There is, therefore, no reasonable prospect of the original decision being varied or revoked and the application for reconsideration is accordingly refused.
4. The one matter which I wish to address in detail here is contained in paragraph 1 of the application. There, the claimant suggests that, although the complaints determined by the tribunal were of direct disability discrimination under section 13 Equality Act 2010 and of a failure to make reasonable

adjustments, she was in fact also bringing complaints of discrimination arising from disability under section 15, which the tribunal did not consider.

5. This is simply not true. I refer in full to the discussions at the start of the hearing regarding the list of issues for the tribunal to determine for that hearing, which are set out at paragraphs 5-13 of the reasons for our decision. However, I would add the following points.

6. The claim form does not include or specify complaints under section 15; the narrative of that claim form reads for the most part as a series of complaints about the respondent's actions generally which, given the "disability discrimination" box has been ticked, might suggest that the claimant is alleging that these actions were taken because of the claimant's disabilities (i.e. direct discrimination under section 13) but that narrative does not obviously or clearly suggest that the actions were allegedly taken not because of the disabilities themselves but because of something else which arose from the claimant's disabilities; in other words, no section 15 complaint is pleaded, either specifically in terms of stating that a complaint under section 15 is brought or in terms of setting out the structure of it (that unfavourable treatment was done, that it was done because of something in particular, and that that "something" arose in consequence of the claimant's disability or disabilities) or even through inference from the factual narrative in the claim. Accordingly, and unsurprisingly, the respondent's response form (although it makes reference to the claimant claiming discrimination arising from disability contrary to section 15 in its background paragraph 2) responds only to complaints of direct discrimination (and reasonable adjustments) in its rebuttal of the complaints at paragraphs 40-47 of the response.

7. No application to amend the claim was made by the claimant in relation to this issue at any stage (the claimant's application to amend the claim which she made during the hearing, which was refused by the tribunal and which is detailed at paragraphs 48-52 of the reasons, was in relation to a different matter). There were, therefore, no section 15 complaints before the tribunal.

8. As noted at paragraph 5 of the reasons, the list of issues for the full merits hearing had long since been agreed between the parties and had been discussed at an earlier case management hearing before a different employment judge. Subject to some of the minor changes referred to in paragraphs 5-13 of the reasons, the parties confirmed at the start of the full merits hearing that the list was agreed. That list contained a heading "*Direct disability discrimination – s. 15 EqA*" (which is clearly contradictory), under which were then listed the various factual allegations which form the basis of the direct discrimination complaints. At paragraph 6 within that section, the legal question asked is "*Whether R committed the following alleged acts which amounted to less favourable treatment of C because of her disability contrary to s. 13 EqA*". It is clear from this that the question to be answered by the tribunal is the direct discrimination question, both from the fact that it is section 13 (and not section 15) which is referenced and from the nature of the "because of" question which, when one refers to the statute, is the section 13 question to be asked and not the section 15 question. Furthermore, even the heading quoted above refers to direct disability discrimination and not to discrimination arising from disability such that, even within the heading itself, there is an anomaly between the complaint and the section of the statute quoted. It is clear from the totality of this that these were intended to be allegations of direct discrimination under section 13 and not of

discrimination arising from disability under section 15 and that the reference in the heading to section 15 was a typographical error. When agreeing the issues at the start of the hearing, and to ensure absolute clarity, I asked the parties whether the reference in the title was therefore just a typographical error and they confirmed that it was; the matter was so non-contentious that it is not even recorded in the section in our reasons regarding the list of issues.

9. It is, therefore, to put it mildly, extremely surprising to find that the claimant is now alleging that there was always a section 15 complaint (or complaints) in the claim. For the reasons set out above, there was not. Furthermore, the issues of the claim were at all stages agreed on the basis that the complaints were of direct discrimination under section 13 (and not discrimination arising from disability under section 15). The claimant, having lost her claim, is simply trying to move the goalposts after the event. There is, therefore, no reasonable prospect of the tribunal's decision being varied or revoked on this ground either.

10. I should also note that, even if there were, this would not result in any change to the tribunal's primary judgment that (on time grounds) it did not have jurisdiction to hear any of the claimant's complaints, as the timescales for any section 15 complaints would be no different from those for the section 13 complaints which the tribunal heard; in other words, even if there were section 15 complaints, the outcome would be the same.

11. As there is no reasonable prospect of the original decision being varied or revoked, the application for reconsideration is refused.

12. I apologise for the delay in responding to the application for reconsideration; however, it was only recently placed before me.

Employment Judge Baty

Date: 7th Nov 2019.

SENT TO THE PARTIES ON

07/11/2019

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FOR THE TRIBUNAL OFFICE