



EMPLOYMENT TRIBUNALS

Claimant: Miss Agnes Dabi
Respondent: Aker Solutions Limited
Heard at: Reading **On: 1 November 2019**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: Mr Z S Varju (Ley Representative)
Assisted by: Ms k Fowler (Interpreter)
For the Respondent: Mr G Clark (Solicitor)

JUDGMENT

1. The claimant's application to reinstate the case number 2700427/2015 is dismissed.
2. The application for reconsideration of the judgment in case 2700427/2015 sent to the parties on 26 February 2016 is dismissed, there is no reasonable prospect of the judgment being varied or revoked.
3. The claim number 3331146/2018 is struck out pursuant to rule 37(2) of the Employment Tribunals Rules of Procedure 2013 on the ground that the claim has no reasonable prospect of success.

REASONS

1. The correct name of the respondent is Aker Solutions Limited.
2. The application to reinstate the 2015 case (2700427/2015) is refused because the case does not come within the protocol created by the Ministry of Justice to deal with claimant which were dismissed or closed because of the operation of the Employment Tribunals and Employment Appeals Tribunals Fees Order 2013.
3. The application for reconsideration of the judgment sent to the parties in the 2015 case on the 26 February 2016 is refused because the claimant waited too long to apply for reconsideration and there are no compelling grounds to allow a reconsideration of the judgment so long after the event.

4. The 2015 case and the 2018 case (3331146/2018) are the same case, in that the claimant complains about the same facts and matters in both cases, and therefore the doctrine of res judicata applies. The 2015 case was struck out by an oral judgment made on the 2 February 2016 (the written record of the judgment being sent to the parties on the 26 February 2016).
5. The preceding paragraphs were set out in full at the hearing. I explained to the parties that due to the full reasons would be provided to follow. I set out below my full reasons for the decision in this case.
6. In 2015 the claimant brought proceedings against the respondent. The claimant's case was given the case number 2700427/2015. On the 1 and 2 February 2016 the case came before a Tribunal consisting of Employment Judge Hill, Mrs AE brown and Mr MJ Selby.
7. The Judgement of the Tribunal was sent to the parties on the 26 February 2016 recording that all the claimant's claims, unfair dismissal, dismissal on the grounds of public interest disclosure, sex discrimination and race discrimination, were struck out.
8. The claimant has made an application for her claim to be reinstated. The basis of that application is that the claimant's claim was previously rejected for failure to pay a fee or to apply for a fee remission, prior of the Judgment of the Supreme Court in the case of R (on the application of UNISON) v. Lord Chancellor. The basis of the claimant's application for the case to be reinstated does not validly apply to the claimant's case. The claimant's case was not dismissed or closed because of the non-payment of the employment tribunal fees.
9. The respondent made an application to strike out the claimant's claims of unfair dismissal, dismissal on the grounds of public interest disclosure, sex discrimination and race discrimination, contending that (i) the claims are scandalous and/or vexatious; and or (ii) that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous , unreasonable and vexatious; and that there has been non-compliance with an order of the Tribunal. That application was successful, and the claims were struck out.
10. The claimant accepts that the claims that are the subject of her application to re-instate are the same. In her letter of 20 September 2018 the claimant states: *"I clearly asked to reinstate the case (no. 2700427/2015 – Miss Agnes Dabi v. Aker Subsea Limited) on a new case number (3331146/2018) and start again the whole employment tribunal procedure from the beginning point. (Starting a new conciliation process on the new case number, set out a new preliminary hearing date, and recently to determine the jurisdiction of the Tribunal in my case.)"*

11. It is clear that the claimant seeks to revive the same case that was struck out by the Hill Tribunal on the 2 February 2016, as set out in a judgment sent to the parties on the 26 February 2016.
12. The process of reinstating cases following the Judgment of the Supreme Court in the case of R (on the application of UNIOSON) v. Lord Chancellor does not apply to the claimant's case. The Supreme Court unanimously held that employment tribunal fees were unlawful and therefore cases that were dismissed or closed by operation of the employment tribunal fees regime were not lawfully dismissed or closed. That does not apply to the claimant's case.
13. The claimant's case was brought to an end as a result of the Judgment of the Hill Tribunal which struck out the claim for after acceding to the respondent's application pursuant to rule 37 of the Employment Tribunals Rules of Procedure 2013 which provide that: "(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds - (a) that it is scandalous or vexatious or has no reasonable prospect of success; (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious; (c) for non-compliance with any of these Rules or with an order of the Tribunal; (d) that it has not been actively pursued; (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out). (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing. (3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above."
14. The claimant has stated: "I am asking the Employment Tribunal to close the newly opened case (case no.3331146/2018) and in the same time asking the Employment to reinstate and continue my original case (no.2700427/2015 - Miss Agnes Dabi v. Aker Subsea Limited) in order to provide me the opportunity to ask reconsideration in my original case or submit an appeal against the original judgment as it was unfair and partial".
15. The issues that appear to arise for determination are (i) what should happen to the new case; (ii) can the 2015 case be reinstated; (iii) can the claimant apply for reconsideration of the 2015; (iv) can the claimant appeal against the judgment made in the 2015 case.

(i) what should happen to the new case (3331146/2018)?
16. The claims which are the subject of the new case have been already determined by the Hill Tribunal in case No. 2700427/2015. The principal of res judicata applies in respect of the those claims and the doctrine of cause of action estoppel applies. The claims have no prospect of success.

Pursuant to rule 37(1)(a) I therefore make an order that the claims are struck out.

(ii) can the 2015 case be reinstated?

17. The answer is no. The process of reinstating cases following the Judgment of the Supreme Court in the case of R (on the application of UNISON) v. Lord Chancellor does not apply to the claimant's 2015 case.

(iii) can the claimant apply for reconsideration of the 2015?

18. There does not need to be an order reinstating the claim for the claimant to make an application for reconsideration. That is open to her in respect of her case even where it has been struck out. The rules of procedure contain the following relevant provisions in respect of reconsideration.

“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.

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.”

19. The claimant's application for a reconsideration is therefore well out of time.

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.”

20. The Regional Employment Judge has appointed me to deal with the application for reconsideration arising from the decision in the Hill Tribunal.
21. The claimant, in her letter/statement dated 21 February 2018 makes clear that she made a deliberate decision not to appeal the decision or to apply for reconsideration.
22. The claimant states that she wanted to apply for a reconsideration of the decision made by the Hill Tribunal in 2016: *“However due to my unfair dismissal I had no money to pay into the tribunal the relevant fee at that time.”* It is to be noted that although a fee was payable for a reconsideration (£350) no application for a reconsideration was ever made. There was never any determination of any aspect of the claim by reason of the failure to make the payment or apply for a remission the claimant simply did not pursue the matter. Further it is to be noted that the claimant had paid the issue fee (£350) and the hearing fee (£950) which meant that the claim was determined at the final hearing.
23. The claimant during the proceedings before the Hill Tribunal was represented by her Mr ZS Varju who is described as the claimant’s partner. The claimant also goes on to point out that at some stage she was under threat of a costs application and I understand her to intend to convey that this to acted as a deterrent to her making an application for a reconsideration at the time. The claimant also was clear that she considered that the Hill Tribunal was biased in favour of the respondent. There were other attacks made by the claimant on the integrity of the Hill Tribunal and also against Mr Clark who appears for the respondent. The essence of the attacks, much of which I was not fully able to understand, was to impugn the integrity of the Hill Tribunal and in particular Employment Judge Hill. No evidence, beyond the assertion of allegations made on behalf of the claimant, to support any of the serious allegations was produced.
24. I can reconsider a judgment “where it is necessary in the interests of justice to do so”. In this case the substance of the claimant’s case against the Hill Tribunal is that the decision was unfair, the Hill Tribunal was biased, there were procedural errors, and the claimant’s case wrongly struck out. These are points for an appeal not points to be made in an application for reconsideration made long after the hearing, today the decision was made more than three years ago. Further the claimant has deliberately waited until Employment Judge Hill was no longer able to consider her case before making the application. I note that the claimant

states: "I also became aware that the Employment Judge Jessica Hill was retired in May 2017. It is also a relief for me as until she was worked as Employment Judge (sic) I was not dare to pursue my claim after her negative habit to me on the tribunal hearing, I was totally intimidated by her."

25. Taking all the circumstances into account I am not satisfied that a reconsideration is in the interests of justice.

(iv) can the claimant appeal against the judgment made in the 2015 case?

26. An appeal against a decision of the Employment Tribunal can only be made to the Employment Appeal Tribunal.

Employment Judge Gumbiti-Zimuto

Date: 1 November 2019

Sent to the parties on:
18 November 2019

.....
For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.