



EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Revive Dental Care Limited

Heard at: Manchester

On: 21 May 2018

Before: Employment Judge Porter
Mr Q Colborn
Mr W K Partington

Representation

Claimant: In person

Respondent: Mr Joshi, solicitor

JUDGMENT ON RECONSIDERATION

The application to amend the judgment is refused and the Judgment made on the 5 December 2017 and sent to the parties on 11 December 2017 is confirmed.

REASONS

1. Written reasons are provided pursuant to the written request of the claimant by e-mail dated 21 May 2018.

Issues to be determined

2. A reserved judgment on the substantive merits of the claim was sent to the parties on 5 January 2017.
3. A remedy hearing took place on 4 and 5 December 2017. A judgment ("the Remedy judgment") was made and announced to the parties on 5 December

2017. The Remedy judgment was sent to the parties on 11 December 2017. Written reasons were requested by the claimant and sent to the parties on 31 January 2018 (“written reasons on remedy”). The application for reconsideration relates to the Remedy judgment.

4. The claimant made written application for reconsideration of the Remedy judgment by emails dated 1 and 13 February 2018, as clarified by the formal application sent by email on 19 February 2018.
5. At the outset of the hearing, the claimant made application to rely on a bundle of documents which she had disclosed to the respondent for the first time on Thursday 17 May 2018.
6. The respondent objected to the inclusion of those new documents as it had not had the opportunity to consider them and the relevance of those documents was not clear.
7. The tribunal sought clarification from the claimant as to the relevance of those documents to this application for reconsideration.
8. The claimant asserted that:
 - 8.1. the new documents comprise medical evidence relating to the claimant’s health prior to the remedy hearing;
 - 8.2. the documents have only recently become available to the claimant from the mental health team. She could not disclose them at the remedy hearing;
 - 8.3. The new evidence supports the evidence which the tribunal considered at the remedy hearing. It merely adds weight to what has been already considered. The same thing is being said about the claimant’s health by different people;
 - 8.4. The only application is for the tribunal to amend the headings of the award of compensation to show an award for personal injury. No application is made for the tribunal to consider making any additional award of compensation.
9. The issue for determination is whether the tribunal should amend the Judgment on remedy to apportion the award for injury to feelings to include a separate award for compensation for personal injury.

Submissions

10. The claimant made a number of detailed submissions which we have considered with care but do not rehearse in full here. In essence it was asserted that: -

10.1. it is in the interests of justice to amend the headings of the award to indicate that part of the award is compensation for personal injury;

10.2. this will protect the money awarded as compensation for damage to health;

10.3. if the award remains as stated then in four years' time the claimant will be no better off because the claimant will lose her right to disability benefits;

10.4. if an award of compensation is made for personal injury then the claimant can put that money in a trust and her benefits will not be affected;

10.5. if the award is not amended then the respondent might as well keep their money because the claimant is no better off;

10.6. an amendment to this judgment as requested will not make any difference to the respondent: it still pays the same amount of money.

11. Solicitor for the respondent made a number of detailed submissions which we have considered with care but do not rehearse in full here. In essence, it was asserted that: -

11.1. the written reasons on remedy are very clear. They set out the reason for the award for injury to feelings;

11.2. the new medical evidence has no relevance to the application;

11.3. it is not in the interests of justice to amend the Remedy judgement as requested by the claimant. There is no justification for the amendment.

Evidence

12. No evidence was heard

The Law

13. Rule 70 of the Employment Tribunals Rules of Procedure 2013 states:

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.

Determination of the Application

14. The tribunal has considered all circumstances of the case, the Remedy judgment and the written reasons on remedy, to decide whether it is in the interests of justice to amend the Remedy Judgment as requested.
15. We note in particular paragraphs 49 – 51 and 57 – 58 of the written reasons on remedy
16. One of the key issues for the tribunal at the remedy hearing was whether there was a causative link between the discriminatory act of the respondent and the severe decline in mental health suffered by the claimant. The tribunal made its findings on the basis of the evidence before the panel at the remedy hearing.
17. The claimant does not seek to introduce new medical evidence to prove that there was a causal link between the discriminatory act and the severe decline in mental health. The claimant states that the new medical evidence merely corroborates the evidence already seen by the tribunal.
18. The new medical evidence is therefore not relevant to this application for reconsideration. It is not necessary for the tribunal to consider that medical evidence.
19. In any event, the claimant does not seek any review of the amount awarded by the tribunal. She merely seeks an amendment of the description given by the tribunal to the total amount awarded. The claimant seeks an apportionment of the amount awarded between injury to feelings and an award of compensation for personal injury on the grounds that it is her belief that: –
 - 19.1. If an award is made for personal injury then this would not affect the amount of benefits she receives from the Department for Work and Pensions; and
 - 19.2. If the award remains as stated in the Remedy Judgment she will lose her rights to disability benefit
20. The written reasons on remedy explain clearly why the award was made. The way in which any monies received by the claimant are subsequently treated by the Department for Work and Pensions is not something that the tribunal is required to take into account when making the decision on remedy.

21. In all circumstances it is not in the interests of justice to amend the Remedy Judgment as requested.
22. The application for reconsideration of the Remedy judgment in the terms sought by the claimant is refused.

Employment Judge Porter

Date: 5 June 2018

JUDGMENT SENT TO THE PARTIES ON
6th June 2018

FOR THE TRIBUNAL OFFICE