



EMPLOYMENT TRIBUNALS

Claimant: Mr Haziz Rahim

Respondent: The Commissioner of Police of the Metropolis

DETERMINATION OF APPLICATIONS ON WRITTEN SUBMISSIONS

Before: Employment Judge Hildebrand (sitting alone)

ORDERS

Application for Reconsideration by the Claimant

- (1) The Claimant's application for reconsideration is out of time and no grounds for an extension of time have been demonstrated. Further it stood no reasonable prospect of success and it is dismissed pursuant to Rule 72

Application for Costs by the Respondent

- (2) The Respondent's application for costs fails.

REASONS

1. Application for reconsideration by the Claimant

2. The Claimant applied for reconsideration of the reserved judgment made following the hearing on 23 October 2019 when the Claimant was represented by Counsel

instructed by his solicitors. Rule 70 provides for reconsideration where it is necessary in the interests of justice. The Respondent cogently opposes the application.

3. The judgment was signed on 28 October 2019 and sent to the parties on 30 October 2019. A copy of the covering letter has been produced and the date appears on the Judgment as promulgated. The application for reconsideration is made under Rule 70 and the time prescribed for making it is, by Rule 71, 14 days from the date on which it was sent to the parties. Accordingly time for the application expired on 13 November 2019. The application was made by email dated 26 November 2019. In it the Claimant stated that his solicitor received the judgment on 15 November 2019 and his application was therefore within 14 days. He notified the tribunal by that email that he was no longer represented by Winstons solicitors.
4. The Claimant is therefore aware of the provisions of Rule 72 which allows 14 days for the application to be made. I take him to be aware of the provisions of Rule 4 which provides the the obligation to prove compliance in time the party claiming to have done it shall prove compliance. All the claimant offers in this context is a statement as to when the solicitor received the judgment, said to be outside the 14 day limit.
5. There is an issue on which the Claimant could obtain documentary proof from his solicitors. He has not. He has not provided any explanation for his delay if he is found to be incorrect in his assertion of the time of sending of the judgment by the tribunal.
6. It follows that the application is 12 days out of time and there is no basis on which a decision to extend time can be judicially exercised. It follows that the application is rejected on grounds that it is out of time.
7. I should correct a typographical error in the judgment before considering in the alternative the prospects of the application. In paragraph 9 of the judgment in the course of recording the submissions made on the application I stated that : “ Although the Claimant pleaded subsequent events in relation to failure to pay overtime this was pleaded as discrimination.” I should have recorded that the subsequent events were not pleaded as discrimination as appears from paragraph 25.

8. Rule 72 provides if the application is in time an Employment Judge should consider if there are no reasonable grounds for the original decision being varied or revoked.
9. The application made by the Claimant provides his view why he considers it is in the interest of justice for there to be reconsideration but does not address the ground on which the judgment was made, namely that there was no allegation of discrimination in the claim form dated after 23 May 2018 and the claim was presented on 9 March 2019. Unless I am to ignore the text of the claim and find the Claimant's claim elsewhere I do not see how this application can stand any prospect of success.
10. The Claimant appears to identify three grounds for the application. These are that his legal representatives did not follow his instructions, other evidence should have been considered which his solicitors failed to provide and the claim raises matters of public importance.
11. I do not consider the failure, if it be so, of his solicitors to follow his instructions and provide information stands any prospect of success. A vast quantity of material was provided but it did not address the jurisdictional barrier which led to the strike out. As the Respondent submits, consideration of fresh evidence requires application of the test in Ladd V Marshall. It must be material which could not have been obtained with reasonable diligence at the original hearing. It must be relevant and would probably have had an important influence on the decision. It must be apparently credible.
12. The original hearing considered relevant documents from the bundle. The deficiency in the Claimant's case lies in the pleading not the supporting material. Again this aspect stands no reasonable prospect of success. Insofar as the Claimant now seeks to place in his documents further emphasis on the medical aspect of his condition, in the many enclosures to his application I failed to find any coherent support for the Claimant being under a restriction on medical grounds from presenting a claim relevant to the period May 2018 to March 2019 or any significant part thereof. The material demonstrates the Claimant corresponding prolifically in this period and undertaking long haul international travel.
13. I do not consider that the application therefore stands any reasonable prospect of success. If it had been made in time I would have dismissed it under Rule 72(1) as

having no reasonable prospect of succeeding in revoking or varying the original judgment.

14. Application for Costs by the Respondent

15. The Respondent applied for costs by letter dated 26 November 2019. Rule 77 provides that such an application can be made up to 28 days after the judgment finally determining the matter in respect of that party is sent to the parties. The operative date is 30 October 2019 in this case. It follows that the final day for such an application was 27 November 2019. The application is therefore in time. The basis of the application is under Rule 76(1)(a) and (b). Sub rule (a) refers amongst other things to the Claimant acting unreasonably in the bringing and pursuit of the proceedings. Further sub rule (b) refers to the fact that the Claimant knew or ought reasonably to have known his claims were entirely without merit. The rule refers to the claims having no reasonable prospect of success.

16. The Respondent asserts that the Claimant should have known that he did not have the necessary employment status to bring claims of unfair dismissal. Alternatively it is said he should have known this on reviewing the response presented by the Respondent. Further it is said the Claimant acted unreasonably in ignoring the cost warning sent by the Respondent on 26 June 2019. This set out the obstacles faced by the Claimant and raised the fact that his discrimination claim was not presented within the ordinary time limits. The Claimant had the benefit of legal advice since at least 7 July 2019. The application submits that the tribunal has an unfettered discretion when considering whether to make an award of costs, and asks that one be made for the total cost of the claim of £5,971.00.

17. The Claimant has resisted the application but it is not clear if one of his documents in support of his position has been provided to the tribunal in a format which can be opened. He has provided the bundle in the hearing I conducted, a memorandum about an incident in Walthamstow. In two following emails he provided 11 and 6 attachments respectively. I have not been able to identify any direct reference to costs and the criteria under which an order should be made or in relation to his means.

- 18.** My conclusion is that this is not a case where the threshold for an award of costs has been met. The Claimant applied as a litigant in person and subsequently instructed solicitors and through them counsel for the two hearings. There was a case management hearing as a result of which counsel withdrew the two claims which faced jurisdictional difficulties as a result of the Claimant status as a constable. The second hearing was in relation to time of presentation of the discrimination claim. No determination was made in relation to the merits of the claims, on which no evidence was heard. The only determination related to the date of the last allegation made and the time of presentation.
- 19.** The Rules provide for case management and for matters of a jurisdictional nature to be resolved at preliminary hearings. That is what has happened in this case. While the claimant has been prolific in the production of documents there is nothing to bring that aspect within the prohibited area of unreasonableness. The claims which were hopeless were promptly withdrawn and the time point dealt with in the time allocated. at a preliminary hearing. Accordingly a Costs order would not be appropriate.

Employment Judge Hildebrand

2 February 2020
Sent to the parties on:
5/2/2020

For the Tribunal:

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