



EMPLOYMENT TRIBUNALS

Claimant: Simwinji Zeko

Respondent: (1) The University of the West of England
(2) Peter Clegg
(3) Sean Watson
(4) Steven Neill
(5) Shay Dare

JUDGMENT

ON THE APPLICATION FOR RECONSIDERATION

1. The claimant's application dated 23rd of March 2020 for the terms of the Deposit Order to be varied is granted.
2. The application to set aside the Deposit Order is dismissed.
3. The respondent's application to vary the case Management Order requiring it to serve an amended response by the 8 April 2020 is granted.

ORDERS

1. The Deposit Order dated 13 March 2019 which was sent to the parties on 19 March 2020 is varied as follows:
 - a. The sum ordered to be paid by way of a deposit in respect of each of the claimant's claims and in respect of each protected ground is reduced as identified in the order of 13 March 2020 is varied to £10.00.
 - b. The date for payment is varied to 19 May 2020 or 28 days from the date of this order, whichever is the later.
2. Order 2.1 of the Case Management Orders dated 6 March 2020 is varied so that the respondent is required to serve an amended response by 26 May 2020 or 35 days after the date of this order, whichever is the later.

REASONS

1. By an application dated 23 March 2020 the claimant applied to set aside the Deposit Order dated 13 March 2020 on the grounds that the Deposit Order was set so high in context as to impede his access to justice.
2. The basis of that application was that the total amount of the deposit amounted to £100 per claim and, in circumstances where the claimant pursued five claims, the requirement to pay £500 within 21 days, in circumstances where the claimant's means was £79.45 per week constituted an impediment to his access to justice because there was a deficit of £87.21 per week.
3. The claimant's calculations which he relies upon in support of his application are inaccurate. The deposit for each claim, if each of the three protected characteristics were relied upon, would amount to £75, and where the claimant sought to pursue all five claims on all three available grounds he would be required to pay a total deposit of £375, not £500 as he alleged in his application.
4. Nevertheless, setting the deposit sums at that level required the claimant to £125 a week, in circumstances where his income from universal credit was £79.45 a week, would necessarily mean that the claimant's access to justice would be impaired as a consequence only of his financial position. And order for a Deposit must be one which a claimant is able to comply with (see Hemdan v Ishmail and another [2017] ICR 486, EAT).
5. In setting the deposit sums, the Judge took into account the claimant's savings of approximately £300. However, the claimant was simultaneously required to pay the outstanding costs orders in favour of the respondent, and the Judge overlooked the effect of that requirement when determining the appropriate sum to be paid by way as a deposit.
6. However, the Employment Judge remains firmly of the view that the claimant's claims as identified in the Deposit Order of 13 March 2020 have little reasonable prospect of success for the reasons given in the case management summary dated 6 March 2020. It is not therefore appropriate to set aside the deposit order. The claimant's application in that regard is dismissed.
7. The claimant needs to be alive to the significant financial consequences if he elects to pursue claims which the Employment Judge has determined have little reasonable prospect of success. That is the very purpose of a Deposit Order. Neither the claimant's right to access to justice nor to a fair trial, entitles him to pursue weak or meritless claims at significant cost of time and resource to the respondent and the Tribunal without consequences. It was for those very circumstances which Rule 39 was designed, following the review of the Tribunal Rules of procedure by Mr Justice Underhill (as he then was) in 2012.

8. Having had regard to the claimant's means, including the fact that he receives £79.45 a week as universal credit, and has no savings of any significance, the Employment Judge determines that the appropriate level of deposit to be paid in respect of each of the claims is £10 in respect of each claim and each protected ground. In consequence if the claimant seeks to pursue all five claims on the grounds of a single characteristic he will be required to pay a deposit of £50. By extension if he seeks to pursue all five claims on the grounds of each of the protected characteristics he will be required to pay a deposit of £150. That will require him to set aside nearly half of his weekly income if he wishes to pursue all of the claims on all the grounds. It will be hard, but it will be achievable.
9. The claimant has not identified what his weekly outgoings are in the application, and in particular has not identified whether the £79.45 is used solely to buy food or is also required to pay accommodation costs and other bills. The Employment Judge therefore operates on the basis that the credit is used for purchasing food and paying non-essential bills.
10. The very purpose of setting the Deposit at this level is to require the claimant necessarily to consider with the utmost care which of the claims which are subject to the Deposit Order, if any, he wishes to pursue. He has other claims which the Employment Judge believes may have far more merit than those which are the subject of the Deposit Order. He may still continue to pursue all the claims of the wishes, but he will have carefully to manage his finances over the next month to do so.
11. The respondent's application that it should not be required to serve an amended response until such time as it is clear which of the claimant's claims he is pursuing, whether as a consequence of non-payment of the deposit or as a consequence of their withdrawal, is a sensible one. There is no purpose to be achieved in the respondent expending time and expense in preparing a response in respect of claims that are no longer pursued.
12. Accordingly, Order 2.1 of the Case Management Orders of the six March 2020 is varied so that the respondent does not need to file an amended response until 14 days after the deposit sums are due to be paid by the claimant.

Employment Judge Midgley
Date 21 April 2020