Case No: 2200145/2019

EMPLOYMENT TRIBUNALS

Claimant: **Ms A. Baker**

Respondent: **House of Commons Commission**

JUDGMENT

The claimant's application dated 27 April 2020 for reconsideration of the decision sent to the parties on 23 January 2020 is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. The decision which the claimant asked to be reconsidered was a decision on the claimant's application to amend the claim. The application was refused.

2. The claimant first raised the question of an amendment to add dismissal to her claim at a case management hearing on 2 August 2019. Employment Judge Wade required the application and proposed amendment to be put in writing and set out dates for the claimant to do this and for the respondent to reply, in the expectation that a decision would be made on the written representations. The claimant applied on 21 August, and the respondent replied objecting on 13 September 2019.

3. The decision was made on 23 January 2020, and sent to the parties on 25 January 2020 with consequential case management directions.

4. Pursuant to order, on 7 February the respondent filed a detailed response to the claim as clarified.

5. The case was due to start a 12 day final hearing in March, but was postponed by Employment Judge Grewal on the application of the respondent, and despite the objection of the claimant.

6. Instead, the case was listed for case management before Employment Judge Tayler on 12 March. By this date the claimant appeared in person, stating her trade union representative was ill. She has said in her letter of 27 April 2020 seeking reconsideration that she stated at the March hearing that the decision of 23 January should be reconsidered. There is no mention in Judge Tayler's case summary of any application to reconsider the decision of 23 January.

7. On 27 April the claimant wrote seeking reconsideration of the decision not to allow the proposed amendment of claim. Before setting out the grounds on which she asked for it to be reconsidered, I note here the relevant rules on reconsideration of judgments.

8. Under the Employment Tribunal Rules of Procedure 2013, a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal "may reconsider any judgment where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

9. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

10. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in Outasight VB Ltd v Brown UKEAT/0253/14/LA that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

11. Returning now to the grounds for reconsideration in the letter of 27 April, they can be summarised as:

11.1 The claimant was adding a claim for disability discrimination, not just unfair dismissal and wrongful dismissal

11.2 Employment Judge Wade had already allowed the application at the hearing on 2 August.

11.3 It had been presumed that the claimant had been paid her notice.

11.4 There had been errors about the dates of two ACAS early conciliation certificates, and on two warnings.

11.5 it was wrong to say the claimant was able to bring proceedings at the relevant time (the three month period starting 27 February 2019) as she had been able to compile the 150 document setting out her grounds of the claim presented on 15 January 2019 because, the claimant says, this document was prepared in September 2018, before

she went sick in October 2018. This had founded an assumption that she would not be able to pursue the claim further.

12. The claimant does not say why she delayed until 27 April to seek reconsideration of the decision not to allow the amendment. She did not raise it until (on her account) the hearing on 12 March. This was a month after the time to seek reconsideration had expired. Her representative was fully engaged with the case when he wrote at length on 6 February objecting to the respondent's request for further case management orders, and on 10 February when he wrote saying the ET3 had been filed out of time on 7 February, and clearly had seen the written decision. The claimant has said in earlier correspondence her representative was taken ill around 5 March, and that she was last in contact with him on 26 February, when he told her about the postponement of the final hearing. In the circumstances it is in no way clear that time should be extended. It is clearly well out of time from the date of the decision, and there is another unexplained delay of 6 weeks from 12 March, when she says she raised it. She does not say whether her representative has recovered, or if the trade union has been able to provide another representative in his place.

13. Even though it is out of time, I have considered the merits of the points the claimant makes, to see if there is any reasonable ground why it is in the interest of justice to reconsider the decision and allow all or part of the amendment application. In considering the interests of justice I consider whether there is a clear mistake made in understanding the claimant's amendment application. The interests of justice, generally and for both parties, also include seeing that claims are not delayed without good reason. The unexpected disruption of hearing lists means exactly when this case can be relisted is not clear, but its age means it will be given some priority. I not with some concern that the list of issues is still not settled. This is to be considered at the case management hearing on 18 May, postponed from today at the claimant's request.

The Decision did not decide adding a claim that the dismissal was discriminatory.

14. The application to amend claim was prepared by the claimant's trade union representative. It is in 39 paragraphs under four sub-headings, headed "background", "application to include unfair dismissal", "application to include wrongful dismissal", and "other considerations". Under "unfair dismissal" (paragraphs 10-26) the claimant asserts, at 18-20 that the dismissal was discriminatory as the dismissing officer overlooked that the claimant could give the reason for sickness absence to the occupational health department rather than the line manager. She adds this was part of a discriminatory course of conduct. The refusal of the amendment *does* consider discriminatory dismissal in paragraph 17, and gives reasons why this is not allowed out of time.

Judge Wade had already allowed the amendment

15. This is not the case, as is clear from the case management orders sent on 23 August 2019, in particular paragraphs 2.4 to 2.7. It was adjourned for written representations and it "will be decided on paper".

Presumption that the Claimant had not been paid her notice

16. The claimant "mentioned" according to Judge Wade at the hearing on 2 August that it had not been paid. The written application states it was not in the March payslip. Neither side has said anything about what has happened since then. If still unpaid, the claimant may have an alternative remedy in the county court where the time limit is 6 years, and she has access to legal advice on this through her union, PCS.

Errors on Dates

17. There is an error in paragraph 7 of the decision, as the certificate was issued in September 2018, not 2019, but nothing turns on that, as the claim was presented on 19 January 2019. Any second certificate, even if valid, given the case law on this, is not material to the grounds on which the application was refused. As for the dates and status of the warnings, the claimant does not say how the decision errs, or the relevance of any error to the grounds on which the decision made.

18. As for when she prepared the grounds of claim document, the relevance of this was her ability to bring a claim in time. The other matters relied on were her ability to participate in the appeal against dismissal, and her well structured letter to the tribunal itself about adjustments for the hearing. These independently suggest that the claimant was able to seek advice and present a further claim within the three month period following dismissal.

Conclusion

19. I consider there is no reasonable prospect of the decision being reconsidered on the grounds shown, for the reasons given. In any event, no grounds are shown why as a matter of discretion the 14 day time limit for reconsideration applications should be extended.

Employment Judge GOODMAN

Date 11 May 2020

DECISION SENT TO THE PARTIES ON

12/5/2020

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FOR THE TRIBUNAL OFFICE