



EMPLOYMENT TRIBUNALS

Claimant: Ms I Cetin

Respondent: Steve Griffiths & Others

JUDGMENT

The Claimant's application dated 1 November 2019 for reconsideration of the judgment sent to the parties on 18 October 2019 is refused.

REASONS

- 1 There is no reasonable prospect of the original decision being varied or revoked.
- 2 The Claimant's application dated 1 November 2019 has only recently been sent to me. I do not know what caused the delay although the Tribunal did suffer from technical system problems for a while and then we have had the coronavirus pandemic. Nevertheless, I apologise for the delay in addressing her application.
- 3 The Claimant sets out the following as the basis of her application:
 - (1) that there are factual errors or omission in the judgement, and that it does not describe her claim fully;
 - (2) that the Respondents are not correctly named; and
 - (3) she refers to some privileged evidence which she says is new.
- 4 The Claimant also questions the dates on the Costs Judgement. The parties' costs applications were first made in written submissions and then orally at a hearing on 8 August 2019. On that date in August 2019, after having

heard the argument, it was clear there would be insufficient time to reach a conclusion, so I “reserved the judgment”, which means that I did not give an immediate judgment in front of the parties. The reference to 3 October is to the date when I sat “in chambers” (that is to say, I worked alone) in order to review all the arguments and reach a judgment.

5 I refer in these reasons to the applications for costs. The Claimant’s application was in fact for a preparation time order, but I refer to it as an application for costs because it falls under the same set of rules as a costs application.

6 None of the matters which appear to be what the Claimant regards as “factual mistakes, lack of accurate description of her claim or omissions” are such I consider that an error could have been made which could result in the judgment on costs being varied or revoked. Mostly the Claimant has identified omissions. It was never the purpose of the costs judgment to detail every single matter, but rather to explain the arguments and how the judgement was reached. Having read the Claimant’s application, I do not consider that there have been any misleading conclusions.

7 The Respondents were named throughout the proceedings up to and including the liability hearing in line with the Claimant’s ET1. The Respondents participated fully in the proceedings. The Claimant only made an application for the names to be amended after the liability judgment and it does not appear that she requires this due to any difficulty in obtaining the monies awarded to her.

8 The Claimant refers to papers which she says were disclosed by the Respondents but which they now say are confidential which should not have been in the bundle. She says she did not read those papers prior to the hearing and they were not referred to as far as I am aware.

9 I set out below my response to various paragraphs in the Claimant’s application which I consider require a response or an explanation. None of the Claimant’s assertions lead me to consider the original decision might be varied or revoked. In so far as I have not provided a detailed response to every matter raised by the Claimant, this is because a number of the matters identified by the Claimant in her detailed comments are matters which are not valid reconsideration points. Those include the following.

9.1 Complaints that the position was more detailed than the judgment records. A reconsideration application is not a process for a detailed critique of a judgement, line by line. It provides a process for a party to raise matters where that party believes such matters indicate the judgment is based on errors or there are circumstances such that it is in the interests of justice for the Tribunal to revoke or vary its judgement. A judgment of this nature cannot be a complete account of every single detail that was raised by the parties in their written and oral submissions. The Judgment ran to over 14 pages and 86 paragraphs. I have explained in the Judgment where I sought to summarise the position and what

matters I took into account. The purpose of it is that there is a clear explanation of how and why the judgment was reached and what was taken into account.

9.2 Arguments about the original liability judgment. The process for reconsideration entitles the Claimant to seek reconsideration in relation to this judgment on costs, not the liability judgment. I therefore cannot consider her comments about the liability judgment.

9.3 Repetition of assertions that were made in written submissions and/or at the hearing. Those points have been made and taken into account.

10 The Claimant makes various assertions in relation to paragraph 2 and the subparagraphs to that paragraph. As noted at the beginning of that paragraph, this was an effort to list the categories of argument, which I noted that the Claimant had made. It was not a detailed explanation of those points.

11 The Claimant says she also complained about two additional matters. She refers to long emails written by the Respondents after the liability judgment was sent to the parties. She did make that argument. However I explained in the hearing that it was my view that the costs application related to costs incurred up to and including the judgment and not afterwards. I did not consider costs arising after the judgment on liability.

12 The Claimant also refers to arguments about her national minimum wage claim more generally. The only issue before me, and therefore the only matters which I addressed, were matters relevant to the cross applications for costs.

13 The Claimant refers to the section of the judgment which is headed "Background". She complains that she was asked to give witness evidence about her financial position. The Respondents applied for a costs order against her. Rule 84 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 provides that in deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay. The Claimant was asked to give evidence about her financial position, as that is the normal process in order that I could have regard to that position, in deciding the Respondent's application that she pay their costs. Had I decided that it was appropriate, applying the rules, that the Claimant should pay the Respondents some or all of their costs, her financial situation would have been a factor which I would have expected to take into account in deciding how much to award. The Respondents were also asked to give evidence on their financial position, but their representative said I should assume they were financially able to pay any costs order that might be made.

14 The Claimant also refers to a question about the possibility of an adjournment at the outset. As the Claimant notes, she declined the opportunity

to ask for an adjournment when it was offered, but was given some time to read the new documents.

15 The Claimant makes a series of comments on the paragraphs 36 to 53 which summarise the Respondents' submissions. She suggests that some of the paragraphs read "as if a fact". As noted in paragraph 24, the purpose of the ensuing paragraphs was to set out the main submissions briefly. All the Claimant's complaints about this relate to matters under the heading "Respondents' Submissions" which was intended to make clear that these are submissions made by the Respondents. They were not accepted as facts. The section in the judgment that is headed "Conclusions" explains the conclusions I reached.

16 In relation to the paragraphs of the Judgment under the heading "Conclusions", the Claimant argues a number of points. In relation to paragraph 55, in which I address the Claimant's argument that the Respondent had been deceptive, the Claimant says she was not able to pursue the totality of her claims. This appears to refer to the liability question, which is not the matter in issue at this stage. In relation to the costs' application, I understood the Claimant's argument that the Respondent had been deceptive was a basis for her assertion that their conduct was unreasonable, which is a test for whether costs should be awarded. This paragraph explains that in the course of the liability hearing, I focussed on the question of whether the Claimant fell within the exemption in the National Minimum Wages legislation. I did not ask for detailed evidence from the Respondents, nor make any findings on the assertions made by the Claimant about deception, as it was not necessary in order to determine the issues which I did have to decide. The Claimant's assertions that the Respondents had been deceptive were contested by the Respondents. As this paragraph notes, I could not base a costs award on serious assertions which I had not determined, and I remain of that view.

17 Paragraphs 58 to 62 set out my conclusion on one point, which is whether the Respondents' defence had no reasonable prospect of success. The Claimant's arguments do not address this as such; rather she addresses the extent to which her claim was clear from the outset. This is commentary on the Judgement and not a point for reconsideration. It remains my view that the claim was always treated by the tribunal as a wage claim but that it did become clearer over time. At the hearing I was asked to determine whether the National Minimum Wage Act was inapplicable by reason of Regulation 57(3) of the National Minimum Wage Regulations 2015, which was a matter only drawn to the Claimant's attention approximately two weeks prior to the Hearing.

18 The Claimant refers to pressure that she alleges The Respondents' representatives put on her representative at a particular point in time and advice she received from her advisers. In most cases a tribunal will not look into the relationship between a party and their representative. Legal professional privilege prevents that. It is normal practice for legally qualified representatives to talk to each other about the merits of a case and its preparation. There is no complaint from the FRU representative or the Claimant's solicitors themselves.

19 In relation to paragraph 73, which addresses points the Claimant made about the judgment monies being outstanding, the Claimant refers to a discussion at the hearing when the Respondents' representative said the Respondents wanted the Claimant's bank details in order to check they were paying the judgment monies to the correct account and they Claimant refused to provide these details. The Claimant correctly notes that I could not see why payment had to be made through her bank and it was my view that the Claimant was not obliged to provide her bank account details. I could not understand why the Respondents did not simply send the Claimant a cheque. I did urge them to pay the Claimant quickly and I did suggest that if the parties could not sort the matter out between them, they could apply to the Tribunal again if we might be able to assist in reaching a solution in which the Claimant received the sum adjudged due. My objective was not to "warn" the Claimant. I did stress my hope that the parties would co-operate to ensure the payment was made to the Claimant quickly. I do not consider this is any basis for reconsideration.

20 The Claimant also says that at the end of the hearing, which is a reference to the liability hearing, she said she wanted to apply for costs but says I tried to dissuade her. I did dissuade her from making an immediate application at that time. I did not think she understood the basis upon which costs are awarded, nor was she prepared for any application at that point. I explained that Rule 76 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 provides that before costs are awarded a tribunal must decide that a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or any claim or response had no reasonable prospect of success. I pointed out that the rationale for the judgment which I had just delivered orally was such that she would have difficulty in the argument that this was a matter where the response had no reasonable prospect of success. Additionally, at that point in time, immediately after the liability judgement had been delivered, the Claimant did not have any schedule of the time she had spent. The Claimant had the opportunity to apply for costs after she got the written liability judgement, which she did. I gave her a significant period of time to provide all the details necessary for a costs application, including her schedule of time spent.

21 The Claimant argues that she wanted her claim to include more matters than were considered and she refers to discrimination and constructive dismissal. As I have noted, this is a reconsideration application in relation to the Cost Judgment. Insofar as the Claimant is explaining why she disputes the Respondent's argument that that they should have costs awarded in their favour because of what they described as lengthy and unfounded allegations made by the Claimant, their argument was rejected and therefore I do not need to reconsider this. The explanation in paragraph 78 addressed that argument made by the Respondents and the fact that they referred me to Employment Judge Welch's order. This paragraph sets out why I rejected their argument.

22 The Claimant complains about Paragraph 82 of the judgment, which is a general paragraph, which merely sought to recognise the fact that this has been a difficult situation for all parties. It did not raise a new matter.

23 In relation to the additional matters that the Claimant seeks to raise, she refers to her efforts to amend the claim, which were made after the claim had been heard. The Claimant refers to her application made in June 2019. The first hearing took place in November 2018 and the judgment was given orally on 10 January 2019. There is no process for amendment at that stage.

24 The Claimant also refers to notes made by the Respondents' solicitors, which have come into her possession as new evidence. The Tribunal does not normally consider notes made by a party's solicitor as they are protected by privilege. While it is possible for the relevant legal professional privilege to be lost, I would not consider any such notes unless I were absolutely certain that such privilege no longer applies and that could require argument from both sides. I do not have the files of papers lodged for the costs hearing to hand as, due to the coronavirus pandemic, I am working remotely. I have no recollection of seeing any notes from the Respondents' lawyers.

26 Finally the Claimant asks the Tribunal to revoke a decision not to order the Respondents to provide photographic identification documents pursuant to her request made in July 2019. The claim had been determined by then, apart from the question of costs. The Respondents had participated in the hearing and I can see no basis to order them to provide photographic identification. While the Tribunal has wide case management powers, this application was made when the substantive claim had been determined and the only matter outstanding was the question of costs. The Respondents had been identified in the proceedings in line with the ET1 and have participated fully in the proceedings.

Employment Judge Walker

Date 22/06/2020

JUDGMENT SENT TO THE PARTIES ON

22/06/2020

FOR THE TRIBUNAL OFFICE - Olu