



EMPLOYMENT TRIBUNALS

Claimant: Ms C Kirchhof

Respondent: Sumitomo Mitsui Banking Corporation Europe Limited

JUDGMENT

The claimant's application dated 16 August 2020 for reconsideration of the judgment sent to the parties on 10 August 2020 is refused.

REASONS

1. Rule 72(1) of the Tribunal Rules 2013 says:

“An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.”

2. In my judgment, there is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.

Role of Acas Conciliation Officer

3. The evidence before the tribunal was that there was minimal involvement from the ACAS officer. The judgment records:

“The COT3 agreement referred to above was entered into on 30 November 2017 at a judicial mediation. Both the respondent and the claimant had legal representation at the judicial mediation. The claimant signed the COT3 agreement herself. It was signed by an employee of the respondent against whom the claimant had made allegations of discrimination.”

The agreement was “signed off” by an ACAS conciliation officer. It is accepted that he had no involvement in the negotiation of the terms of the agreement, but did confirm that the parties were both legally represented.”

4. The claimant did not say in evidence that the ACAS conciliation officer was not contacted until after the COT3 had been signed. Even if she had, this would not result in a different outcome.
5. This is because the claim was still “live” until the ACAS conciliation officer confirmed it was settled. Without the involvement of the ACAS officer, the COT3 agreement would not have been effective to resolve the dispute. Although a contract would have been formed between the parties, it would only have been legal binding to the extent that it settled any common law claims. The settlement of the statutory discrimination claims and waiver relating to future such claims did not become binding until after the ACAS conciliation officer became involved.
6. The discussions in parliament to which the claimant has referred do not change the law. The case law on the role of the ACAS conciliation officer is set out in the judgement and was correctly applied.

Limitation Point

7. Even though the specific case is not referred to in the judgement, I applied the test in *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686. In that case, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs.
8. This does not detract from the need to draw a distinction between an ongoing situation or a continuing state of affairs (using the language in *Hendricks*) and a one-off act that has continuing consequences. In my judgment, when the parties entered into the COT3 agreement this was a one-off act with continuing consequences.
9. Determining whether something is a one-off act or a continuing state of affairs is a fact sensitive question. I concluded that the facts before me in this case were much closer to the facts of the *Kapur* and *Sougrin* that I did refer to in my judgment.

Employment Judge E Burns
22 August 2020

JUDGMENT SENT TO THE PARTIES ON
24/08/2020..

FOR THE TRIBUNAL OFFICE