



EMPLOYMENT TRIBUNALS

Claimant: Mr J Barber

Respondent: Homebase Rooms Limited

HELD AT: Sheffield

ON: 1 September 2020

BEFORE: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that the claimant's application for reconsideration of the Judgment of 26 August 2020 is refused as it has no reasonable prospect of success.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record of the decision in question was sent to the parties.
3. I shall treat the claimant's email of 22 August 2020 (in which he expresses a wish to appeal) as an application for reconsideration of the Judgment which I gave on 7 August 2020. The written record of the Judgment was not in fact sent to the parties until 26 August 2020. It follows therefore that the claimant's application for reconsideration of the Judgment was presented in time.

4. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows the Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
5. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:
 - *Ensuring that the parties are on an equal footing.*
 - *Dealing with cases in ways which are proportionate to the complexity and importance of the issues.*
 - *Avoiding unnecessary formality and seeking flexibility in the proceedings.*
 - *Avoiding delay, so far as compatible with proper consideration of the issues.*
 - *Saving expense.*
6. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
7. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were there to be a reconsideration hearing.
8. The claimant's application for reconsideration is made upon the basis that I was wrong in law to hold that his breach of contract claim was presented outside the time limit for the presentation of such claims to an Employment Tribunal. By article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 a breach of contract claim must be presented to the Tribunal within a period of three months beginning with the effective date of termination of the contract giving rise to the claim or within such further period as the Tribunal considers reasonable if the Tribunal is satisfied that it was not reasonably practicable to have brought the claim in time.
9. The claimant's contract of employment was terminated without notice on 13 October 2019. This date is given by each party as the termination date: (it is given as the termination date in the claimant's claim form and in the respondent's response). The claimant did not contact ACAS for the purposes of commencing early conciliation until 20 January 2020. This is a necessary

step to take before issuing proceedings in the Tribunal. (The time spent in early conciliation will extend the three months' period). The claimant did not take this step until after 12 January 2020 upon which date the three months' time limit expired. The claimant therefore does not benefit from any early conciliation extension. The claim form was presented to the Tribunal on 22 January 2020. This day is more than three months from the date of termination of the contract. There was no evidence that it was not reasonably practicable for the claimant to have presented the claim in time.

10. Therefore, I am satisfied I was correct to have found that the claim was presented out of time in circumstances where it was practicable to have presented it in time and that there is no reasonable prospect of the claimant succeeding at a reconsideration hearing in persuading the Tribunal to vary or revoke the Judgment.
11. The reconsideration application is refused accordingly.
12. The claimant now contends that the termination date was 17 November 2019. If this were to be the case then the claim will have been presented in time. However, this does not avail the claimant. In any case the respondent agreed, by way of an *ex gratia* payment, to pay to the claimant the sum of £653.75 which, when added to the amount already paid to him equates to five weeks' pay. He was entitled to five weeks' notice to terminate his contract. He was dismissed without notice. He is entitled to be compensated for not having received his notice. The measure of damages is up to five weeks' pay: that will put him in the position he would have been in had the contract been performed.
13. It follows that the claimant has recovered the value of the breach of contract claim. He may thus not pursue it as a matter of law as its value has been extinguished by the respondent's monetary payment. There is no basis upon which for the claimant to return this matter to the Tribunal as he has had in full his common law remedy for the respondent's breach of contract.
14. The claimant is correct to say that the claim for a redundancy payment was presented in time. A more generous limitation period of six months is provided for in respect of redundancy claims. A redundancy award was made to the claimant accordingly.

Employment Judge Brain
Date: 10 September 2020