



EMPLOYMENT TRIBUNALS

Claimant: Mr A Keane

Respondent: Linburg Coach Travel

Date 14 October 2020

Employment Judge Dr EP Morgan

Appearance:

Claimant In Person (at hearing of 25 August 2020)

Respondent No attendance (at hearing 25 August 2020)

S Healy (Counsel by subsequent Written Submission).

Judgment on Reconsideration

1. The Judgment of 30 June is set aside.
2. The Claimant's claims of detriment contrary to section 44(1)(c) and section 47B of the Employment Rights Act 1996 are reinstated;
3. The Claimant's claims of automatic unfair dismissal contrary to section 100(1)(c) and/or section 103A of the Employment Rights Act 1996 are reinstated.

REASONS

Introduction

1. This case came before the Employment Tribunal on 25 August 2020 for the purpose of disposal of the claims previously identified. Upon a review of the Tribunal file, however, it became apparent that the claimant's lack of qualifying period of employment had been properly identified as an impediment to a conventional claim of unfair dismissal within the meaning of section 98 of the Employment Rights Act 1996. This issue had prompted a request of the Claimant to identify why his claims of unfair dismissal should not be dismissed. Being

unrepresented, the Claimant read that communication as a determination that since he lacked the necessary period of employment, he could not advance the remainder of his claims. He did not respond.

2. Thereafter, the Respondent applied for the strike out of the remaining monetary claims. This application was based on the contention that the Claimant had failed to comply with the case management directions which had previously been issued.
3. In advance of the hearing on 25 August 2020, the file was reviewed. At this point, I formed the preliminary view that the Claim Form as filed by the Claimant had in fact articulated claims of automatic unfair dismissal contrary to section 103A of the Employment Rights Act 1996. I therefore considered it was appropriate to consider whether the Tribunal should in the interests of justice exercise its discretion to reconsider the order previously made. The Respondent was not in attendance at the hearing on 25 August 2020. It confirmed its non-attendance by email to the Employment Tribunal transmitted at 10:51hrs on the morning of the hearing. By that stage, the hearing had already commenced; albeit with some difficulty being encountered by the Claimant.
4. Given that the Respondent was neither present nor represented, directions were issued placing the Respondent on notice of the issue which had been identified and granting a period in which to file any written submissions. The Tribunal has now received those submissions.

The Issue

5. Rule 73 of the Employment Tribunal Rules, invests the Tribunal with the ability to raise the issue of reconsideration itself. In the course of the previous orders of the Tribunal, I detailed the nature of the issue and the reasons for it. In this respect, it was observed there was within the claim form [§8.2] a narrative in which the Claimant confirms he raised matters with management. These related to:
 - 5.1 the provision of safety equipment (e.g. snow chains) within the vehicle allocated to him;
 - 5.2 the damaged condition of the vehicle;
 - 5.3 the working conditions in which he was required to participate.
6. I further noted there was a specific complaint concerning the arrangements for the provision of a vehicle to transport the Claimant and his colleague from Dover to their base in Stafford.
7. According to the Claim Form, these issues were communicated to the Transport Manager and other head office personnel; prompting the termination of his contract. It is also said that he was subjected to verbal abuse on account of having raised these matters. There is no suggestion of any elected representative to whom the Claimant could refer such concerns.

8. Further, during the hearing on 25 August 2020 the Claimant confirmed, and his Claim Form makes clear, that the issues around vehicle safety and condition were raised in the context of being required to transport school children in continental Europe. Taken at face value, and without more, it is possible to discern from the Claim Form (as originally drawn) a potential allegation of health and safety dismissal and/or an allegation that the Claimant made protected disclosures which, so he alleges, prompted the termination of the relationship with the Respondent.
9. Given this position, the Claim Form might be considered to incorporate a number of the core components of a potential claim of whistle-blower detriment and/or automatic unfair dismissal contrary to sections 47B and 103A of the Employment Rights Act 1996. The same narrative raises issues which require consideration in the light of section 44(1)(c) of the same Act.

The Respondent's Position

10. The submission filed on behalf of the Respondent has been compiled by Sam Healy of Counsel. It extends to 5 pages. The document understandably places reliance upon the fact that the Claimant was given an opportunity to show cause why the claims should not be struck out and did not avail himself of that opportunity. It is also contended that there has been no application to amend the claim; with the result that it was 'permissible' for EJ Wade to make the strike out order which she did. The point is also made that the Claimant has not himself made any application for reconsideration of the strike out order. It is also submitted that the reconsideration of the earlier order will result the parties in additional expense; particularly given that the remaining claim is according to the Respondent, a 'straightforward Wages Act claim.' Finally, it is submitted that it is no part of the Tribunal's role to amend an existing complaint; and/or that before permitting any such claim to proceed, the Tribunal should evaluate the merits of the prospective claim.

Discussion and Conclusion

11. Rule 70 of the Employment Tribunal Rules invests the Tribunal with a discretion to reconsider a judgment where it is satisfied that it is necessary in the interests of justice to do so. The wording of the rule makes clear that the issue is not one of desirability but necessity. The 'interests of justice' is a broad and elastic concept. There can be no challenge to the proposition that it extends to the obligation of the Tribunal to ensure that proceedings are conducted in accordance with the overriding objective.
12. In approaching the issue in this case, I bear in mind the following:
 - 12.1 The correspondence which led to the judgment of 30 June 2020 was undertaken as part of the sift procedure;
 - 12.2 It is not disputed that the claim form was compiled and presented by the Claimant as a litigant in person;
 - 12.3 Whilst increasingly referred to colloquially as a 'pleading', the Claimant is required to give the details of his claim and nothing more;

- 12.4 The Claim Form in this case has been completed at §8.1 to advance a claim of unfair dismissal. Section 8.2 of the same form begins with an acknowledgment of the Claimant's period of employment. There follows a page of single space closely typed script in which the Claimant details concerns regarding working terms, conditions and practices in the context of the carriage of passengers; and
- 12.5 It is possible from those details to discern not merely a series of complaints advanced by the Claimant, but the suggestion of a retaliatory response from the Respondent; culminating in the termination of the employment relationship.
13. Contrary to the submission advanced by the Respondent, the reconsideration of the Judgment of Judge Wade does not give rise to any issue of amendment. On the contrary, the issue before the Tribunal concerns a more fundamental question, namely: whether it is in the interests of justice to give effect to what is already detailed within the Claim Form filed by the Claimant.
14. The Respondent goes further and submits that the real reason for the Judgment of 30 June 2020 is the Claimant's own failure to respond to the correspondence issued by the Employment Tribunal. The fact that the Claimant did not respond is not disputed. His failure to do so have been previously been noted. That omission should not, in and of itself, obscure from view the demands of the interests of justice in a given case; especially where the Claimant was and remains unrepresented. Similarly, in connection with the Respondent's submissions concerning the overriding objective and the costs burden likely to be generated in the event that the Claimant is permitted to pursue those claims which are capable of discernment from the facts originally provided. It is inevitable that the reinstatement of those claims will make increased demands of both parties; including the potential for additional costs of preparation and participation. But again, this is not *per se* a justification for refusal of reconsideration where, as here, the interests of justice necessitate a different outcome.
15. Viewed objectively, the claim form identified not merely an act of dismissal, but a sequence of events said to have given rise to it. It makes specific reference to the formulation and communication of concerns by the Claimant to his managers. It is alleged that in response, he was informed: "the joke" is now on you; you are no longer employed by us. At this juncture, the issue is not whether the narrative there set out is accurate or well founded. It is simply whether the facts recited provide support the conclusion that the interests of justice require reconsideration and reinstatement of those claims. I have no hesitation in concluding that the interests of justice do indeed necessitate the reinstatement of the claims previously articulated. Contrary to the submission made on behalf of the Respondent this requires no amendment. Nor does it involve the Tribunal in supplementing the facts as set out in the Claim Form. Rather, it requires nothing more than the Tribunal receiving those factual matters at face value and identifying from them the causes of action to which an unrepresented party is alluding. This is an exercise undertaken by Employment Tribunal's every day in the conduct of case management hearings.

16. Accordingly, and on its own initiative – having given notice to the parties and received their representations- the judgment of 30 June 2020 is reconsidered and set aside. The claims of detriment contrary to section 44(1)(c) and/or section 47B of the Employment Rights Act 1996 and the claim of automatically unfair dismissal contrary to section 100(1)(c) and/or section 103A of the Employment Rights Act 1996 are reinstated. Case management directions will be issued to the parties by means of separate order.

Employment Judge **Morgan**
14 October 2020

Sent to the parties on:
14 October 2020