EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr Glaucia Pereira	**v**	**GFT Financial Ltd**

Decision on the Claimant's application for reconsideration of the judgment dated 29 July 2019 and sent to the parties on 29 August 2019

1. On 25 July 2019 at a Preliminary Hearing, the Claimant applied for, and was refused by me, permission to amend her claim so as to add claims of:

   a) pregnancy dismissal and

   b) "automatic" unfair dismissal on the basis the Respondent infringed one or more of her statutory rights (s 104(1) Employment Rights Act 1996) (having raised a grievance).

2. In directions given the same day, I ordered that the full merits Hearing date set for 18 to 20 November 2019 be vacated and a new Hearing date be substituted of 2, 3, 4, 5 and 6 March 2020.

3. On 11 September 2019, the Claimant applied by email for reconsideration of my refusal. Unfortunately, it would appear that this emailed application was not printed out and added to the file until 6 January 2020.

4. On 6 February 2020, (the then Acting) Regional Employment Judge Joanna Wade postponed the hearing fixed for March 2020 on the grounds that the Claimant's application for reconsideration had not been considered. She acknowledged that, while the application was made on 11 September 2019, it had "only just been referred and Employment Judge Stewart is not available until late February to consider it."

5. The reason for my non-availability was that I was out of the country until the end of February 2020.

6. On 27 February 2020, the Claimant asked that (i) the hearing be put "on hold for 12 months" and (ii) "the structure of the final hearing be adjusted over 5 weeks, 1 day per week)".

7. This request provoked the Respondent's solicitors to write to the Tribunal a letter dated 10 March 2020 strongly opposing these requests and respectfully requesting themselves that the hearing be set down as soon as possible following the reconsideration outcome.

8. Unfortunately, the application for reconsideration did not reach me upon my return to the UK at the end of February 2020. The Claimant did not chase for a decision on her application although she was able to devote considerable time and effort in providing a detailed response to the Respondent's solicitors' letter of 10 March 2020.

9. The Claimant made a separate application by email dated 3 August 2020 requesting that the data that identifies her be removed from published judicial decisions. That was understood by me to whom that application was referred to mean the document recording the Judgment, Reasons and Directions that I signed on 29 July 2019 following a preliminary hearing conducted on 25 July 2019 (but erroneously referred in the said document as having been conducted on 26 July 2019).

10. On 9 August 2020, I considered that application and refused it. I did so without reference to the file as it was a discreet issue. The consequence of that was that I remained ignorant of the Claimant's application for reconsideration until early this month. When it was brought to my attention, I bespoke the file and was able to glean the history of this matter as recorded above.

11. The application for reconsideration was made timeously on 11 September 2019. Through no fault of the Claimant, I am only coming to deal with it some 13 months later. I therefore will deal with it as I would have dealt with it in September 2019.

12. The Employment Tribunal's Rules of Procedure provide for Reconsideration thus:

> **Principles**
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> 70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
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> **Application**
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> 71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
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> **Process**
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> 72.—(1) 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.

> Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

13. I have re-read the reasons for my refusal of the Claimant's application on 25 July 2019. And then I have read the Claimant's email of 11 September 2019.

14. In the reasons for my judgment, I wrote:

> 4. The Claimant did not respond to the Strike Out Warning letter until 5 April 2019 when she wrote setting out a list of 19 exceptions to the requirement that she have two years' service to claim unfair dismissal, the list being, I assume, copied from some online source. The list had three exceptions highlighted by shading. They were numbered 7, 8 and 11. Exception 7 was said to be:
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> > Where an employee is dismissed due to Sex, Race, Age or Disability Discrimination. An employee should bring a claim for discrimination, not unfair dismissal. If successful, they are likely to receive more compensation.
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> 5. Exception 8 was said to be:
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> > Dismissal relating to an employee asserting their rights under employment laws.
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> 6. Exception 11 was said to be:
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> > Dismissal relating to an employee asserting their rights under the Employment Relations Act 1999, section 10, the right to be accompanied to a disciplinary or grievance hearing.
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> 7. The Claimant in her letter said:
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> > I referred to points number 7 and 8 below. Additionally, while point number 7 indicates that only claim of discrimination is required, because point number 8 also applies, I have presented two claims (i) gender discrimination and (ii) unfair dismissal.
> >
> > To clarify: Point 8 applies because I was dismissed following Grievance, meaning that this resulted from myself asserting my employment rights.
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> 8. It is of note that she could have, but did not, highlight by shading point number 5 that applied:
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> > Where dismissal is linked to pregnancy or maternity rights.

15. And, in the Discussion section of my Reasons, I wrote in paragraph 22:

> I do not accept that a highly educated woman, recently finding herself pregnant but also losing her job some 10 days after disclosing that fact to her employer, would need the guidance of a lawyer before being able to assert she had been discriminated against, if she actually thought the two events were connected. She was able to research her employment rights in August and she was able to find out about the early conciliation procedure and contact ACAS within 10 days of her dismissal.

16. The Claimant in her email of 11 September 2019 asserts there to be medical evidence that she would wish to present that would, she says, establish that

mental health issues of the type she asserts herself to have suffered from can negatively affect cognition, including memory loss and deficit of attention.

17. If I allow, for the moment, there to be medical evidence that the Claimant could present that would indicate that she suffered mental health problems and for there to be research indicating the possibility that mental health problems could have negatively affected her cognition, her ability to research the exceptions to the requirement that she have two years' service to claim unfair dismissal suggests strongly that her attention to detail was unimpaired. Furthermore, as Point number 5 was included in the list of exceptions, it could have acted as a prompt to her memory and thus any cognitive deficit in the form of memory loss would have been countered.

18. Thus, I consider that there is no reasonable prospect of my original decision being varied or revoked. In such circumstances, I must, and do, refuse the application.

Signed

Employment Judge Paul Stewart

This 12th day of October 2020

Sent to Parties : 13/10/2020