



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms I Cetin

London Borough of Islington

JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made on 21 September 2020 to reconsider the judgment sent to the parties on 2 January 2020 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application to reconsider is refused as there is no reasonable prospect of the judgment being varied or revoked.

REASONS

Introduction

1. By a claim form presented on 18 March 2019 the claimant presented claims of unfair dismissal, race discrimination and "other payments", her employment having ended on 15 July 2015, mentioning that employment tribunal fees had "prevented" her from bringing the claim earlier.
2. The respondent applied by email of 23 April 2019 for the claim to be dismissed under Rule 27 Employment Tribunal Rules of Procedure 2013, pointing out that the Supreme Court had quashed the Fees Order in July 2017. The respondent presented its response on 9 May 2019. The matter was listed for a preliminary hearing to determine the respondent's application.
3. I was the employment judge at the preliminary hearing on 2 January 2020. For the purposes of considering this reconsideration application, I have looked at the tribunal file with the notes I took at the hearing and the draft of the oral judgment I gave on the day. I no longer have the bundle of documents and my note indicates that there was either a witness

statement or we used an email of 19 August 2019 which the claimant had sent in answer to the respondent's ET3 as her evidence.

4. I decided that the tribunal had no jurisdiction because the claims were presented out of time and, in the alternative, I found that, they would have been struck out as a fair trial was no longer possible because of the long delays. I gave oral judgment. No written reasons were requested and a short written judgment was sent on the same day, 2 January 2020.
5. I was unaware of any appeal to the EAT and the order of 25 August 2020 until the file was referred to me by the Watford office on 24 January 2021.

The reconsideration application

6. The reconsideration application refers to a notice of appeal dated 12 February 2020 which I will now attempt to summarise. The claimant raises a number of concerns about the respondent which I do not believe need to be repeated here.
7. The first matter which may be relevant for any reconsideration is her explanation for the delay in the claim being presented related to tribunal fees. In the notice of appeal, she explains her difficult personal situation in 2016 in relation to fees and that she had brought another ET claim against a subsequent employer in May 2018. In the tribunal bundle for that case, in October 2018, the claimant said she found that there had been a reference from the respondent stating she had been dismissed. From my notes, I can see that was mentioned at the preliminary hearing. From what I was told of the reference, it was factually correct, in that the claimant had been dismissed. I can also see from the notes of the preliminary hearing that the claimant was asked about the delay between October 2018 and March 2019 and her reply was she was finding out about tribunal fees. She said she didn't think she was in London when the Supreme Court judgment was announced and didn't have a computer. Her evidence was that she found out about fees being abolished "*probably a year later*" in 2018.
8. The notice of appeal also records the claimant's concerns about the conduct of the preliminary hearing. Doing the best I can, the hearing being over a year ago, I will address these now. I can see that there were two bundles and that I looked at them both. I took two breaks to look at documents and to consider my judgment. As the claimant was the only witness, because I was considering the out of time point, she was the person asked most questions. I may well have advised the claimant to answer Yes or No to questions put to her as that is often all that is needed in reply. The claimant had ticked the box for race discrimination but there was nothing about her race, ethnicity or ethnic origin (or, indeed, no suggestion of discriminatory acts or comparators) in the claim from so that might well be why I asked for more detail of that, although I have no note of it.

9. I heard submissions from the respondent and the claimant and believe I gave the claimant the time to say anything that she felt was relevant. After a short period to deliberate, I gave oral judgment. My short note indicates that the claimant sought to discuss it with me, which I said I could not do. I told her of the right to ask for written reasons and may well have told her about the publication of judgments on the internet. She did not ask for written reasons either then or within 14 days.

Rules

10. The relevant employment tribunal rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

Principles

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.

Application

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.

Process

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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

11. My first task is to consider whether to consider the application at all, it being considerably out of time. Rule 5 allows me to extend time but it is an exercise of discretion and will depend on the reasons for the delay.
12. If I decide to consider the application, I then have to consider whether reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

13. This matter was properly considered at a preliminary hearing in January 2020. The claimant was well aware of the right to ask for written reasons but chose not to request them. Nor did she apply direct to the tribunal for reconsideration. This has led to delays, not all of which are the fault of the claimant, but it makes this reconsideration application almost nine months out of time. There is little or no explanation for the delay except that the claimant chose to lodge a notice of appeal instead of coming back to the employment tribunal. This is not a case where I would exercise my discretion to extend time to consider the application and it is refused on that ground.
14. However, I have taken a pragmatic view that, because the claimant is unrepresented and the EAT has stayed the appeal to allow the claimant to make the application, I will consider the application on its merits.
15. The points made by the claimant about the preliminary hearing are not all accepted. An unsuccessful party will remember the hearing with some disappointment but my notes indicate, and it is confirmed in large part by the notice of appeal, that it was a hearing where I saw all the documentary evidence and heard from the claimant. I heard submissions from both parties and took time to consider my judgment. The delays in the bringing of this claim were substantial, from dismissal in July 2015, the abolition of fees in July 2017, the claimant's knowledge of abolition no later than 2018 and a claim form presented in March 2019. There was no evidence of any connection between what had happened to the claimant before dismissal and the reference which was purely an administrative action. In any event,

any claim, if there was one about the reference, which was not entirely clear, was also out of time. There is no reasonable prospect of the judgment being revoked or varied. It would not have been in the interests of justice to reconsider this judgment, even if the application had been presented in time.

Dated 3 February 2021

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Employment Judge Manley
South East Region

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Judgment sent to the parties on

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For Secretary of the Tribunals