EMPLOYMENT TRIBUNALS

Claimant: Miss R Adegunle

Respondent: (1) N Brown Group plc
(2) J D Williams & Co Ltd

RECONSIDERATION DECISION

Upon considering the claimant's application for reconsideration under rule 71, I consider that there is no reasonable prospect of my original decision of 2 November 2020 (sent to the parties on 9 November 2020) being varied or revoked, and that it is not necessary in the interests of justice to reconsider that decision. The application is refused.

REASONS

1. At a preliminary on 2 November 2020 I determined that: (1) The claimant's complaints of disability harassment contrary to section 26 of the Equality Act 2010 were presented in time so far as those complaints relate to acts or omissions falling after 30 June 2018; (2) The claimant's complaints of disability harassment contrary to section 26 of the Equality Act 2010 were not presented in time so far as those complaints relate to acts or omissions falling on or before 30 June 2018. It is not just and equitable to extend time. The Tribunal does not have jurisdiction to hear those complaints; (3) In any event, the claimant's complaints of disability harassment contrary to section 26 of the Equality Act 2010 claim are struck because they have no reasonable prospect of success; and (4) The claimant's sole remaining complaint of constructive unfair dismissal may proceed to a final hearing.

2. My judgment to that effect, together with written reasons for it, were signed by me on 3 November 2020 and sent to the parties by the Tribunal administration on 9 November 2020.

3. On 9 March 2021 the Tribunal administration referred to me an email from the claimant dated 26 February 2021 chasing a reply to an earlier email from her dated 10 January 2021. As a result of my inquiries, further emails from the claimant dated 15 November 2020, 6 December 2020 and 16 December 2020 were referred to me. I had not seen any of these five emails until the reference to me on 9 March 2021.

4. This email correspondence is somewhat confused and confusing. I take account of the fact that the claimant is a litigant in person. She appears to wish to "appeal" my decision of 2 November 2020, but she has belatedly recognised that appeals from Employment Tribunal decisions are not dealt with by the Employment Tribunal itself, but by the Employment Appeal Tribunal. Accordingly, she has sought to relabel her correspondence as being an application for a "reconsideration" of my earlier decision.

5. Reconsideration of Employment Tribunal decisions are addressed by rules 70-73 of the Employment Tribunal Rules of Procedure 2013. Those rules provide, so far as is relevant to the present matter, as follows.

6. A Tribunal may on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again. 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 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. An Employment Judge shall consider any application thus made. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused, and the Tribunal shall inform the parties of the refusal.

7. I am prepared to proceed on the basis that the application has been made in writing (in the various emails to which I have referred) and that it has been made within 14 days of 9 November 2020 (the date on which my original decision with reasons was sent to the parties) – the first email in the series being dated 15 November 2020. Although not initially labelled as an application for reconsideration, what was intended as such an application has become apparent from the subsequent emails. It is not entirely clear that all the email correspondence has been copied to the respondent, but at least some of it has.

8. What is less clear, however, is whether and how the claimant has set out why reconsideration of my original decision is necessary. She refers variously and without detail to me having only covered some of her points; of facts being ignored; of wanting to submit new evidence (without saying what); of wanting to challenge my opinions; of wanting a reconsideration on a point of law; and of having used incorrect terminology.

9. I suspect that the claimant has misunderstood the decision that I made on 2 November 2020. I did not hear evidence as to the complaints themselves. I made no substantive findings of fact. I was dealing solely with preliminary issues of (a) time limitation and (b) reasonable prospects of success.

10. I permitted her unfair dismissal complaint to proceed to a final hearing.

11. However, I found that some of her other complaints had not been presented within the statutory time limit and in circumstances where there were no grounds for extending time. Therefore, the Tribunal had no jurisdiction to hear those complaints. Of the remaining complaints that had been presented in time, however, I found that they had no reasonable prospect of success (that is, taking her complaints at their highest). I struck those complaints out for that reason. As I reassured her at the preliminary hearing, that did not prevent her from giving evidence at the final hearing about those matters in support of her unfair dismissal complaint, but she could not rely upon those matters as giving rise to a free-standing complaint of disability harassment which the Tribunal could determine one way or another, and provide her with a remedy (that is, separate from any remedy that her unfair dismissal complaint, if successful, might attract).

12. There is nothing in the claimant's emails referred to above that leads me to conclude that a reconsideration of my original decision is necessary in the interests of justice. I consider that there is no reasonable prospect of the original decision being varied or revoked. The claimant has simply provided me with no material or reasons why I should consider doing so. Her application comes nowhere near the threshold at which a judge might consider that a decision could arguably be reconsidered, such that the views of the respondent might be sought and/or a reconsideration hearing might be convened.

13. Upon considering the claimant's application under rule 71, I consider that there is no reasonable prospect of my original decision of 2 November 2020 (sent to the parties on 9 November 2020) being varied or revoked, and that it is not necessary in the interests of justice to reconsider that decision. The application is refused.

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Judge Brian Doyle

DATE 12 March 2021

DECISION & REASONS
SENT TO THE PARTIES ON

15 March 2021

FOR THE TRIBUNAL OFFICE