



EMPLOYMENT TRIBUNALS

Claimant: Ms Yuliia Khimicheva

Respondent: Key Promotions (UK) Ltd

JUDGMENT

The respondent's application dated 2 March 2021 for reconsideration of the Judgment sent to the parties on 20 February 2021 is refused.

REASONS

1. The respondent applies for reconsideration of the judgment issued on 20 February 2021.
2. The application for reconsideration is on the following grounds: that the Tribunal reached the wrong decision because,
 - the Tribunal overlooked relevant evidence
 - the reasoning is based on incorrect assumptions
 - the video link hearing was rushed and alien
 - Tribunal relied on Ms Edwards who was not prepared for the questions put, instead of Mr Sells.
3. The evidence now put forward was before the Tribunal. It was not overlooked.
4. The respondent argues that the GP assessment dated 15 July 2019 contradicts the dates relied on by the claimant that she notified the respondent of her pregnancy on 9 July 2019.
5. The judgment does not simply rest on a finding that the claimant notified the respondent of her pregnancy on 9 July 2019. That element in the application is based on a misreading of the judgment.
6. The "incorrect assumptions" on which the basis of which the Judgment has been challenged have not been identified. It is not clear where the Judgment is said to rest on facts unsupported by evidence.

7. The hearing had been listed in the Case Management Order of Employment Judge Hargrove for two days, originally to be heard on 19 and 20 October 2019. That was converted to a Cloud Video Platform hearing on 9 October 2020. It was then postponed.
8. It is up to the parties to put the evidence they rely on before the Tribunal panel, in accordance with the Orders given. The Order in respect of the bundle was that it was to be provided to the claimant by 22 June 2020 and to the Tribunal on the first day of the full hearing.
9. The Order referred the parties to the Presidential Guidance – General Case Management with a link to the Guidance online. The Presidential Guidance sets out that the bundle is not to be provided to the Tribunal in advance of the hearing unless requested. Here, it was not requested.
10. Mr Sells had provided the Courts and Tribunals Service (“HMCTS”) with a bundle in June 2020, for the hearing in October. He had not understood the Order given.
11. He indicated by email on 20 January 2021, “Please note the respondent has previously provided all parties with a document bundle and will not be supplying electronic versions of this.”
12. The bundle provided was no longer available, in spite of a search being made, it not being the practice of the HMCTS to store documents for pending cases on behalf of the parties.
13. He was not able to provide the panel with an electronic bundle at the start of the hearing. He had not asked the Tribunals Service to convert the bundle he had earlier provided to an electronic bundle.
14. The claimant had sent by email the documents she relied on.
15. Much of the first day allocated to the hearing was effectively lost while the documents were emailed by Mr Sells to HMCTS individually and largely unidentified, from which the Tribunal compiled the bundle. There was then a difficulty with the internet connection. The hearing was stopped at 3.15 pm, to allow for the compilation of the bundle and panel reading.
16. Neither party wanted a further postponement, the hearing having been deferred already by reason of the Covid-19 pandemic.
17. Oral evidence was taken on the second day and deliberations and judgment on the merits of the claims reserved with remedy deferred to a later date, should the claim be successful. Both parties had the time they needed to complete cross-examination and re-examination and the Tribunal Panel had the time needed to ask questions. The original time estimate of two days would have included time for reading, deliberations, judgment and remedy. Given the measures taken, the hearing was not rushed; the same amount of time was available for oral evidence.
18. It is for the parties to decide who they need to give evidence in support of their case at an Employment Tribunal hearing.
19. The Case Management Order of 27 April 2020 sets out that any witness relied on must provide a witness statement and that the witness statement must contain in numbered paragraphs and in date order all of the information which the witness wishes to give to the tribunal.
20. There was no limit imposed on the length of the witness statements and no limit on the number of witnesses each party might call.
21. The Presidential Guidance contains further guidance on witness statements.

22. The Respondent provided a witness statement for Ms Edwards. Ms Edwards was the manager who had dismissed the claimant.
23. No witness statement was provided for Mr Sells.
24. Mr Sells represented the Respondent at the hearing. He was asked if he was giving evidence and he said he was not. He said he would answer any enquiries that the Tribunal had.
25. The Tribunal proceeded on the basis that the Respondent was calling only Ms Edwards. Mr Sells did not seek to give evidence himself. He made a submission at the conclusion of the evidence.
26. There was no challenge at the time to the procedure the Tribunal adopted at the hearing.
27. It is accepted that a hearing by Cloud Video Platform is a recent introduction and that this had been necessary because of the Covid-19 pandemic. The parties had consented to the hearing proceeding on that basis and did not seek during the hearing that the case be deferred until a face-to-face hearing was practicable. Both parties wished the case to proceed without delay.
28. It was consistent with the Overriding Objective at paragraph 2 of Schedule 1 of the Employment Tribunals (Rules of Procedure) Regulations 2013 to proceed on that basis. Breaks were taken and the inexperience of both parties with such proceedings and such a method of conducting the hearing was taken into account.
29. The application is refused pursuant to Rule 72(1) because there is no reasonable prospect of the original decision being varied or revoked on the grounds set out.

Employment Judge Street

Dated 15 March 2021