EMPLOYMENT TRIBUNALS

Claimant: Miss K Paczkowska

Respondents: 1. Europia (Social Enterprise) Charity No. 1161453
2. Procure Plus Holdings Limited

HELD: Manchester (in chambers) **ON:** 9 February 2021

BEFORE: Employment Judge McDonald

UPON APPLICATION made by letter dated 12 March 2020 to reconsider the judgment dated 26 February 2020 under rule 71 of the Employment Tribunals Rules of Procedure 2013 ("the ET Rules"), and without a hearing,

JUDGMENT

1. The time limit under rule 71 of the ET Rules for the claimant to apply to reconsider the judgment dated 26 February 2020 is extended to 12 March 2020 and the claimant's application to reconsider was therefore made in time.

2. The claimant's application for reconsideration of the judgment sent to the parties on **26 February 2020** is refused.

REASONS

Introduction

1. By an emailed letter dated 12 March 2020 the claimant applied for reconsideration of the Tribunal's judgment striking out all claims against the second respondent. That judgment was sent to the parties on 26 February 2020 ("the Judgment") following a preliminary hearing held on 19 December 2019 ("the preliminary hearing").

2. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or

revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013 ("the ET Rules")).

3. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).

4. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the original hearing
- that the evidence is relevant and would probably have had an important influence on the hearing; and
- that the evidence is apparently credible.

5. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

Preliminary Matters

6. In this case, I decided on preliminary consideration under rule 72(1) that the application should proceed. The claimant and the first respondent agreed that the reconsideration could be considered without a hearing. The second respondent submitted that the reconsideration application should be considered at a hearing. I decided that a hearing was not necessary in the interests of justice. The parties had had an opportunity to provide written representations and the likely delay and additional costs to the parties involved in holding a hearing was not in accordance with the overriding objective. The Code P at the head of this judgment confirms my decision was made in chambers on the papers.

7. As I have explained in the Case Management Order of today's date, I was due to consider this matter in chambers on 17 August 2020 but was not able to because the bundle of documents from the preliminary hearing was not available. I had a copy of that bundle today thanks to the first respondent providing copy on the 16 December 2020. Page numbers referred to in this judgment are page numbers in that bundle.

8. In reaching my decision I considered the claimant's application dated 12 March 2020, the second respondent's written objections to the reconsideration in letters dated 25 March and 20 April 2020, the first respondent's written submissions dated 6 May 2020 and the claimant's letter to the Tribunal dated 5 November 2020.

Time limit points

9. There were two time-limit points which I needed to decide. They were whether the claimant's application was made in time and whether the first respondent's written submissions were made too late.

The claimant's application for reconsideration

10. The claimant's application was sent to the Tribunal by email on 12 March 2020. The first respondent said this meant the application was time-barred (para.10 of its written submissions). Rule 71 of the ET Rules says that an application for reconsideration "shall be presented in writing…within 14 days of the date on which the written record….of the original decision was sent to the parties". In this case the Judgment was sent to the parties on 26 February 2020.

11. Because of rule 4(3) of the ET Rules the 26th February 2020 is not counted and the 14 day runs from (and includes) 27 February 2020. That means the 14-day time limit expired on 11 March 2020 and the claimant's application was made one day out of time.

12. Rule 5 of the ET Rules gives the Tribunal a power to extend any time limit of its own initiative whether or not it has expired. In this case I consider that it is in accordance with the overriding objective to extend the time limit for the claimant's reconsideration application. In doing so I take into account the fact that the claimant is a litigant in person and that English is not her first language. It does seem to me from her email of 17 August 2020 that made a genuine mistake about when the 14-day time limit ran. Even if I am wrong about that, I am satisfied that dealing with the case fairly and justly means an extension of time should be granted. The prejudice to the claimant of not being able to pursue her application seems to me to outweigh the prejudice to the respondents caused by a delay of one day.

13. My decision on this point is that the time for making the application to reconsider should be extended by one day and that the claimant's application is not time-barred.

The first respondent's written submissions

14. The first respondent's written submissions were sent to the Tribunal and the other parties on 6 May 2020.The claimant says I should not take them into account because they were sent after a deadline of 20 April 2020 set by the Tribunal.

15. It is correct that on 6 April 2020 the Tribunal directed that the respondents write giving reasons why the judgment should not be reconsidered by 20 April 2020. However, on 26 June 2020, when confirming the application would be considered without a hearing, the Tribunal directed that further representations must be sent by 17 July 2020. The first respondent's written submissions were made before that final cut off point for submissions. In those circumstances I do not accept the claimant's submission that I should not take the first respondent's written submissions into account.

The application for reconsideration

16. In the Judgment I decided to strike out the claims against the second respondent because they had no reasonable prospects of success. As I set out at paragraphs 15-17 of the Judgment, I could see no basis for saying that the second respondent took any part in the decisions about which the claimant complained or

the incidents on 13-15 November 2018 which formed the basis of her harassment complaint. I found that the documentary evidence supported the second respondent's case that it was surprised to learn that the post which the claimant was offered by the first respondent was on a self-employed basis. As I record at paragraph 15 of the judgment, the claimant was unable to explain on what basis the second respondent might be liable under the 2010 Act.

17. In her application for reconsideration the claimant says that the second respondent is potentially liable under s.112 of the 2010 Act because it knowingly helped the first respondent discriminate, victimise or harass her. Other than clarifying the legal basis of the complaint, however, it does not seem to me that the application provides any basis for reconsidering the Judgment.

18. The claimant's application repeats the allegation which she made at the preliminary hearing that the second respondent acted as the first respondent's "HR department". I recorded at paragraph 15 of the Judgment why I did not accept that was accurate.

19. She also suggests that her recruitment was less favourable than a British person and "labelled as MOCK" which she says the Cambridge Dictionary defines as a verb meaning "to laugh at someone, often by copying them in a funny but unkind way" and "to make something appear stupid or not effective". The reference to "mock" is at p.74 of the bundle which is a screenshot from the second respondent's database recording how the claimant performed at her "mock interview". I appreciate that English is not the claimant's first language and I think she is mistaken about the use of "mock" on p.74. It is clear to me that "mock interview" in this context simply means "practice interview" which is what the database entry is describing.

20. The claimant also says she wishes to make new victimisation and harassment claims against the second respondent based on how she says the respondent and its counsel behaved at the preliminary hearing itself. It must be for her to decide whether to bring those as new claims against the second respondent. They do not change the findings I made in the Judgment about the claims already being brought and the lack of any reasonable prospects of them succeeding against the second respondent.

21. Finally, the claimant says that it is imperative that the documents supplied by the second respondent in the bundle for the preliminary hearing remain in the bundle for the final hearing. That was a point she also made at the preliminary hearing (as I recorded at para 17 of the Judgment). As I said in that paragraph, the fact that a third party has relevant evidence is not enough to justify joining them as a party to Tribunal proceedings or keeping them as a party if there is no claim against them having a reasonable prospect of success. Documents which the claimant already has which are relevant to the issues in the case should be included in the bundle for the final hearing of the case. There is nothing to stop the claimant asking whether employees of the second respondent whether they will attend the final hearing to give evidence if they have relevant evidence to give.

22. In summary, I find that the claimant has not shown that it is in the interests of justice to reconsider the Judgment. The matters she raises in her application were either matters I had already taken into account in making the Judgment or would not have resulted in a different decision.

23. I therefore refuse the application for reconsideration of the strike out judgment.

Employment Judge McDonald
12 March 2021

JUDGMENT SENT TO THE PARTIES ON

23 March 2021

FOR THE TRIBUNAL OFFICE