



EMPLOYMENT TRIBUNALS

Claimant: Mr M Uddin

Respondents: (1) BGC Technology International Limited
(2) Mrs D Patel
(3) Mr A Agosta

JUDGMENT (Reconsideration)

1. Following the Claimant's application dated 22nd February 2021 (as further set out in his emails dated 24th February 2021 and 2nd March 2021) for reconsideration of paras 23,25 and 36.3 of the the judgment dated 10th February 2021 (sent to the parties on 11th February 2021) and taking into account the Respondent's response to that application dated 24th March 2021, the judgment dated 10th February 2021 (as to paras 23,25 and 36.3) is not reconsidered, for the reasons set out below.
2. All parties confirmed that an oral hearing was not required. It was in the interests of justice to proceed without a hearing.

REASONS

1. The reason for this reconsideration of these particular paragraphs is because the Claimant provided further more complete medical evidence which was potentially relevant to the issue of the reason why he brought his claims out of time (bar one which was struck out) because he says it was partly his mental health which affected his ability to do so, which problem he said had remained untreated since 2013, the date of the partial OH report produced by him for the hearing on 28th January 2021.
2. Following issue of the Rule 72(2) letter dated 1st April 2021 confirming there would be no reconsideration hearing and asking the parties for any final representations, the Claimant sent an email to the Tribunal on 6th April 2021 at 13.00. The Claimant did not copy in the Respondents and said that he was excluding the Respondents because he was attaching further evidence on a confidential basis which he did not want the Respondents to see. He told the Tribunal not to send the attachments to the Respondents.

3. The attachments were a folder called 'Evidences.zip' and 'audio talking therapies mp3' the latter being it was said a recording of one of the Claimant's therapy sessions.
4. The Tribunal does not privately consider evidence from one party which is not provided to the other parties. I therefore did not open the attachments, read any of the documents or listen to the recording. The Claimant's email dated 6th April 2021 and his attachments are therefore not taken into account in this decision.
5. The issue is whether the judgment should be reconsidered not whether the Claimant objects to particular findings as to how his behaviour is described.

The partial 2013 OH report

6. The onus was on the Claimant to show that he was unable to bring his claim in time due to his ongoing mental health issues. The extract from the 2013 OH report did not support that proposition whichever year it dated back to, even if the Claimant says the problems persisted because they remained untreated.
7. The Claimant has now provided the missing other three pages of that partial document (in his CPR response bundle). If he was able to produce these now he was able to produce them at the hearing on 28th January 2021 and his explanation for not doing so (claimed to be motivated by a restriction on bundle size) is not accepted – see below. He now also says that the reason for the extracted 2013 report was because it was 'privileged' due to a past settlement agreement but the Claimant in any event still does not adequately explain how he felt able to nonetheless select the page provided at the hearing, presumably the page he wanted the Tribunal to take into account, and how he can now produce the complete set of OH reports in the CPR response bundle, despite the claimed restrictions on their use. These are documents which could have been produced at the hearing and, as identified by Judge Ross in his order dated 3rd November 2020, in unredacted form in particular as regards the documents' dates. He was able to confirm the year of the partial OH report at the hearing when asked and has not adequately explained why he could do that and yet now still provide the complete series of OH reports with the year still redacted.
8. The Claimant has also now provided (CPR response bundle) a further OH report dated 17th February (year redacted, presumably around 2013) which on page two in any event records his ability to manage the legal process of ongoing litigation and the liaison with professionals that this requires, inconsistent with now claiming that untreated problems from 2013 affected his ability to present this Tribunal claim in time in the years after he left the First Respondent at the end of 2016. The new evidence does not therefore support his proposition that because his mental health problem remained untreated after 2013, he was unable to present his Tribunal claim in time.
9. The Claimant says that he did not provide the complete document because of claimed restrictions on bundle size (reconsideration application para 16). He had already provided pages 310-353 of the main bundle for the hearing

on 28th January 2021 (which included the 2013 partial OH report). He then provided a further 47 page bundle of his own for the hearing, a 10 page skeleton argument and 10 pages containing his amendment applications. For this reconsideration he has provided a 7 page reconsideration application and two further bundles namely the CPR response bundle and a reconsideration bundle of 48 pages. He has also provided a recording of a telephone call in which he does not speak. None of this is consistent with feeling constrained in any way because of bundle size from producing the complete 2013 report for the hearing (an extra three pages), taking into account he then decided to produce his own separate additional bundle for the hearing, notwithstanding he had already contributed to the main joint bundle.

10. The Claimant does not like the findings at paras 23,35 and 36.3 of the judgment but it was for him to produce the evidence on which he relied. His approach to medical evidence became relevant to his approach to documents generally, which was also relevant to the just and equitable assessment as part of the time limit issue (para 36.3). It was not just an issue in relation to that 2013 report and was linked to a pattern of other partial documents.
11. The Claimant says he is not a legal expert but he was represented in relation to his first Tribunal claim (and his County Court claims) and given the detailed and extensive submissions at this hearing, the two detailed amendment applications and this application it appears likely that he is getting some legal help. He is not an inexperienced claimant.
12. The Claimant had the opportunity to submit medical evidence for the hearing on 28th January 2021 and only supplied more complete documents with this reconsideration application when picked up on his tendency to only provide partial documents (also evident in relation to emails – judgment para 25). In any event the medical evidence he has now supplied does not support the proposition that he was unable to bring his claim in time due to his mental health. The Claimant has veered between choosing to provide partial documents (having been told not to) and then, when criticised for it, able to provide complete documents (albeit with the date still redacted). The concerns identified in para 23,25 and 36.3 of the judgment remain.
13. For the above reasons, it is not in the interests of justice to reconsider these paragraphs of the judgment dated 10th February 2021 and the original decision is confirmed under Rule 70 of the Tribunal Rules 2013.

Employment Judge Reid

Date: 12 April 2021