



EMPLOYMENT TRIBUNALS

Claimant: Mr E Awe

Respondents: (1) Meridian Integrated Systems Ltd
(2) L'Oreal (UK) Ltd

Heard: Remotely (by CVP) **On:** 23 March 2021

Before: Employment Judge Faulkner (sitting alone)

Representation

Claimant: In person

First Respondent: Mr G Cheetham (Counsel)

Second Respondent: Ms L Gould (Counsel)

UPON APPLICATION by the Claimant made by an email dated 19 March 2021 to reconsider the judgment sent to the parties on 24 August 2020, under rule 71 of the Employment Tribunals Rules of Procedure 2013,

JUDGMENT

The Claimant's application for reconsideration is refused on the basis that it was presented out of time, there is no good reason to extend time and, in any event, there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Ordinarily, and in accordance with rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules of Procedure"), the Claimant's application for reconsideration would not have required a Hearing. This is because I have dismissed it at the first stage, on the grounds that it was presented out of time, there is no good reason to extend time and, in any event, there is no reasonable prospect of the original decision being varied or revoked.

2. The reason this matter was dealt with at a Hearing was because there were other matters before the Tribunal, recorded separately in Case Management Orders, and it was plainly appropriate to deal with, and receive submissions from each of the parties in respect of, the reconsideration application also, so that all outstanding matters could be dealt with together. References to page numbers below are to the bundle prepared by the Second Respondent, which it is useful to refer to, although it was principally prepared to assist the Tribunal in dealing with the case management matters. I also refer below to the Claimant's skeleton argument. This was the document attached to his email to the Tribunal of 19 March 2021, which included his reconsideration application and also set out his position on the case management issues.

3. The only other Hearing in this matter to date was a Telephone Case Management Preliminary Hearing on 3 August 2020, which as it happens came before me. One of the matters discussed at that Hearing, as my Case Management Summary (pages 88 to 96) shows, was the Claimant's eligibility to pursue a complaint of unfair dismissal. The Case Management Summary recorded the following (pages 89 to 90):

"...it is agreed [the Second Respondent] was at no point the Claimant's employer, and in relation to both [Respondents] ... [that] the Claimant did not have sufficient qualifying service. I asked the Claimant whether he was alleging that his dismissal was automatically unfair. He repeated what he had set out in correspondence, namely that he believed his dismissal to be an act of race discrimination.

Having heard my explanation that this was not a sufficient basis for a complaint of unfair dismissal under the Employment Rights Act 1996 ("ERA"), the Claimant accepted that the Tribunal has no jurisdiction to hear this complaint and withdrew it. There being no reason why the complaint should not be dismissed as a result, I have issued a Judgment accordingly".

4. Consequently, I signed a judgment on 21 August 2020 ("the Judgment"), which was sent to the parties on 24 August 2020, dismissing the unfair dismissal complaint following withdrawal (page 102).

5. The Claimant's case for, as he put it, "revisiting" his unfair dismissal complaint, was set out at paragraphs 11 and 12 of his skeleton argument. His oral submissions, reflecting what is set out in the skeleton argument, can be summarized as follows:

5.1. that he had found it difficult to secure new work since his dismissal by the First Respondent on 4 March 2020, given the fact of his dismissal and that he has since been out of work;

5.2. he believes that if his unfair dismissal complaint were revived, he would have the opportunity to argue that he should be reinstated or re-engaged, which if granted would give him the opportunity to leave the First Respondent's employment without being dismissed;

5.3. that new information had come to light since he withdrew the complaint, namely the introduction of the Coronavirus Job Retention Scheme ("the Scheme") on 23 March 2020 – the Claimant says that he would have been

eligible to be furloughed under the Scheme because it applied to anyone on the First Respondent's payroll as at 28 February 2020;

5.4. he would then have had two years' service to pursue an unfair dismissal complaint;

5.5. he was aware of the Scheme in August 2020 but not, he says, that he was eligible for it.

6. I agree with Ms. Gould's submission that what the Claimant was seeking was a reconsideration of the Judgment. A reconsideration application must be dealt with in accordance with rules 70 to 73 of the Rules of Procedure about which I need only note three key points.

7. The first is that applications for reconsideration must be presented within 14 days of the date on which the written record of the original decision was sent to the parties (rule 71). The second is that a tribunal may 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 (rule 70). The third is that if the employment judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application for reconsideration shall be refused (rule 72(1)).

8. I have explained above how this particular application came to be dealt with at a hearing, when strictly speaking no hearing was necessary. As to the substance of the application, as I stated at the Hearing, the Claimant's application for reconsideration is refused on the following grounds.

9. First of all, I had no explanation from the Claimant as to why his application was not made within the required 14 days. The Tribunal has a general discretion to extend time (rule 5 of the Rules of Procedure), including for reconsideration applications. There were however no grounds to do so in this case. Whilst the Claimant informed me that he did more reading about the Scheme after the last Hearing in August 2020, that cannot satisfactorily explain why his application was not made until almost seven months after the date of the Judgment.

10. Secondly and in any event, for the reasons given by both Respondents, there is plainly no reasonable prospect of the original decision being varied or revoked. This is so for at least the following reasons:

10.1. the Claimant communicated his wish to withdraw his complaint of unfair dismissal following careful discussion at the Hearing in August 2020;

10.2. no reason was put forward at that time why, on withdrawal, the complaint should not be dismissed;

10.3. as Mr. Cheetham submitted, the grounds on which the withdrawal and dismissal occurred are unchanged, namely that the Claimant was never employed by the Second Respondent, was employed by the First Respondent for less than two years, and advanced no basis for a complaint of automatically unfair dismissal;

10.4. as both Respondents submitted, the factual basis on which the reconsideration application was made was fundamentally flawed – the fact that the Claimant was dismissed on 4 March 2020 remains unchanged;

10.5. in any event, he would not have been entitled to benefit from the Scheme as it had not been introduced at that point – to be eligible he would have needed to be employed at the time the Scheme was introduced and on the payroll at 28 February 2020, or have been dismissed because of redundancy on or after 28 February 2020 and re-employed by the First Respondent;

10.6. further, as Mr. Cheetham pointed out, there has never been an obligation on an employer to apply the Scheme – in other words, the Claimant could not have insisted on being furloughed even if eligible to be so.

11. I have considerable sympathy for the difficulties the Claimant has encountered in securing new work since his dismissal, but it is absolutely clear that his application for reconsideration must be refused for the reasons I have given. Even if I had granted it, I would have confirmed my earlier decision, for the reasons given above.

12. The Claimant's remaining complaints are of course unaffected.

Note: This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the COVID-19 pandemic.

Employment Judge Faulkner
31 March 2021

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