

Reserved Judgment



Case Number: 2201463/2020V

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Miss R Boampong

LCH Ltd

JUDGMENT AND ORDER ON PRELIMINARY HEARING

HELD AT: London Central

ON: 28 April 2021

BEFORE: Employment Judge A M Snelson (in chambers)

On reading the documents on the Tribunal file, the Tribunal adjudges and orders as follows.

JUDGMENT

The Claimant's claims for monies alleged to be outstanding under the terms of the settlement agreement in case no. 2200063/2016 and/or damages for breach of that agreement are struck out as having no reasonable prospect of success.

ORDER

The Claimant's application for reconsideration of the Judgment sent to the parties on 15 December 2020 is refused.

REASONS

Introduction

1. By a Judgment & Order on Preliminary Hearing sent to the parties on 15 December 2020 I struck out part of the Claimant's case as having no reasonable prospect of success and dismissed other parts for want of jurisdiction. The result was that all of her case except for a claim under the Tribunal's contractual jurisdiction was dismissed. As to the surviving claim, I

invited her to make representations as to why it should not be struck out as legally unsustainable.

2. On 29 December 2020, the Claimant sent to the Tribunal a 30-page document wrongly dated 14 December 2020, entitled 'Submissions and Adjustments', which raised numerous challenges to my Judgment & Order and my reasons for it. A covering email stated that the document was intended to stand as the "detail of the basis of [her] appeal".
3. On 30 December 2020 the Claimant sent a document substantially the same as that sent the day before, accompanied by an email in which new document was described as supporting an "application for reconsideration and Appeal."
4. The London Central Regional Office was closed on health and safety grounds on 17 December 2020 and did not re-open until 26 April 2021. The consequential disruption, which I greatly regret, explains in large part the inordinate delay in dealing with the Claimant's application. On 19 March the Tribunal invited the Respondents' comments on the application, which were supplied in the form of written submissions prepared by Mr P Halliday, counsel, dated 29 March and amended on 30 March.
5. These reasons should be read with those accompanying my original Judgment & Order.

Reconsideration

6. By the Employment Tribunals Rules of Procedure 2013 ('the Procedure Rules'), r71(1), a 14-day time limit applies to reconsideration applications. There is a general power under r5 to extend time limits.
7. By r71(2) of the Procedure Rules it is provided that a reconsideration application shall be refused if the Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.
8. Through Mr Halliday, the Respondents submit that the application for reconsideration is out of time and should fail on that ground. I reject that submission. The Tribunal takes a broad, non-technical approach to procedural questions, especially where it is dealing with an unrepresented party. In substance, I treat the application of 29 December as an application for reconsideration. Moreover, had I seen this point otherwise, I would have had no hesitation in granting the necessary extension. If the Claimant was in error at all, the delay was minimal and granting the one-day extension would occasion no prejudice to the Respondents besides depriving them of a purely technical answer to the application.
9. Turning to consider the application in its substance, however, I am in no doubt that it must be refused.
10. In my original reasons I identified, made factual findings upon, and

determined a capacity issue (whether the Claimant had lacked mental capacity to enter into the settlement of her 2016 ET claim against the Respondents), a time issue (whether her claims (or any of them) were excluded from the Tribunal's jurisdiction on time grounds), and an employment status issue (whether she was at any material time employed by the Respondents under a contract of employment). My decisions, adverse to the Claimant on each of the three issues, dictated the outcome, namely that the claims by which she sought to re-litigate claims in the 2016 proceedings must be struck out, the remaining claims, bar that brought under the contract jurisdiction (as to which, see below under 'striking out') must be dismissed for want of jurisdiction, being out of time, and such claims as depended on the existence of an employer/employee relationship between the parties failed for the further reason that there had been no such relationship.

11. In my reasons accompanying the Judgment & Order, I also endeavoured to explain the procedural history and my decisions concerning the management of the preliminary hearing and subsequent events.
12. I have read the Claimant's very lengthy document with care. It consists largely of a sustained and wide-ranging attack on my analysis and conclusions, coupled with what Mr Halliday calls "lurid" allegations of bias, corruption and other forms of judicial misconduct. Having also re-read my reasons I consider that the Claimant raises no ground for re-opening the preliminary hearing, or any aspect of it. I believe that my decision was correctly reached in light of the evidence and the applicable law, and that my procedural handling of the hearing and subsequent events was fair and proper. I reject the charges of bias and associated complaints. I stand by my original reasons, which will not be improved by repetition or re-formulation.
13. In the circumstances, I see no arguable basis for reconsidering any part of my judgment and no prospect of any part of it being varied or revoked. That a party disagrees with a decision is not a ground for reconsideration. Accordingly, I refuse the application under the Procedure Rules, r72(1).

Striking out

14. In para 45 of my reasons accompanying the Judgment & Order sent out on 15 December 2020 I said this:

My adjudication leaves one matter unresolved. The Claimant purports to claim moneys owed or damages for breach of contract (Grounds of Claim, paras 47-56). The Order of EJ Isaacson did not deal with this aspect. It seems to me that the money/damages claim must fail on the basis of my decision above that the Claimant was not employed by the Respondents. A claim for a sum due or for damages for breach of contract can only be brought in the Employment Tribunal by a person employed under a contract of employment: see the Employment Tribunals Act 1996, ss 3 and 42 and the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994. Mr Halliday further argues (submissions, para 7, footnote 13) that the money/damages claim would be doomed even if the Claimant had been employed under a contract of employment because the sums claimed did not

become due on, and were not outstanding on, termination of the (alleged) employment (see the Employment Tribunals Extension of Jurisdiction (England & Wales) 1994, Art. 3(c)). At present I can see no answer to these points. Accordingly, the Claimant will be permitted 14 days from the date of promulgation of this judgment to deliver any representations on the question whether the money/damages claim should be struck out on either of the grounds relied upon.

15. In her documents of 29 and 30 December 2020 the Claimant challenged my preliminary view on the contract claim but offered no defensible legal ground for doing so. I am satisfied that, for the two reasons which I have identified, that claim is misconceived and has no reasonable prospect of success. It follows that the only proper course is to strike it out.

EMPLOYMENT JUDGE – Snelson
28th April 2021

Judgment entered in the Register and copies sent to the parties on: 28/04/2021

For Office of the Tribunal