



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs J Bartlett

AND

Respondent

Commissioners for Her Majesty's
Revenue and Customs

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 10 May 2021

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of the judgment and reasons dated 19 March 2021 which was sent to the parties on 25 March 2021 ("the Judgment"). The grounds are set out in the letter attached to her e-mail dated 7 April 2021. That letter was received at the Tribunal office on 7 April 2021. The application for reconsideration was referred to the Judge on 7 May 2021 and an apology is offered for the delay.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. The grounds relied upon by the Claimant are summarised below:
 - (1) That the Respondent had not provided the Claimant with copies of authorities it relied upon prior to the start of the hearing and when the Claimant was sent them by e-mail, she had insufficient time to consider them.
 - (2) That it was not unreasonable for the Claimant to have waited until the conclusion of the internal processes.

- (3) The Claimant's previous understanding was that she could only bring a claim before the Employment Tribunal if she no longer worked for the Respondent.
- (4) That in undertaking the balancing exercise, undue weight was given to the forensic challenges faced by the Respondent.

The law

5. In Trimble v Supertravel Ltd [1982] ICR 440, the Employment Appeal Tribunal decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".
6. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

Conclusions

7. The grounds of the application have been considered as follows.

That the Respondent had not provided the Claimant with copies of authorities it relied upon prior to the start of the hearing and when the Claimant was sent them by e-mail, she had insufficient time to consider them.

8. At the start of the hearing, it became apparent that the Claimant had not received copies of the authorities the Respondent wanted to refer to the Tribunal, which set out the tests for determining questions of time limits. The authorities relied upon by the Respondent were well known to the Tribunal. Counsel for the Respondent was asked to identify for the Claimant and Tribunal which passages in the authorities were relevant as to the tests to be applied. Counsel did this and the Claimant was given an opportunity to look at the various passages. The hearing was adjourned at 1021 for her to do so and resumed at 1034. On resumption the Claimant confirmed that she had read the relevant passages and was content to continue. The Claimant did not request any additional time. When the Claimant gave

evidence, she was asked questions by the Judge about why her claim had been presented when it was and the hardship that would be experienced if time was not extended.

9. There is no reasonable prospect of the Judgment being varied or revoked on this ground and the application for reconsideration is refused.

That it was not unreasonable for the Claimant to have waited until the conclusion of the internal processes. The Claimant's previous understanding was that she could only bring a claim before the Employment Tribunal if she no longer worked for the Respondent. That in undertaking the balancing exercise, undue weight was given to the forensic challenges faced by the Respondent.

10. The Claimant gave evidence from 1035 to 1131, during which time she was asked questions by the Judge and cross-examined by Counsel for the Respondent. Neither in her witness statement, nor during giving evidence did the Claimant say that her previous understanding was that it was only former employees who could bring a claim before the Tribunal. In balancing the various factors when making the decision account was taken of the difficulty for the Claimant in raising the issue with the Respondent, her misapprehension that she needed to exhaust the internal procedures before bringing a claim and why she did not present her claim in time. It was necessary to balance the hardship to the Claimant, if time was not extended, against that to the Respondent if it was. Those factors were considered as set out in the written reasons. After taking into account the matters raised in the application for reconsideration, there is no reasonable prospect of the Judgment being varied or revoked and the application for reconsideration is refused.
11. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked].

Employment Judge J Bax
Date: 10 May 2021

Judgment sent to the Parties: 11 May 2021

FOR THE TRIBUNAL OFFICE