



EMPLOYMENT TRIBUNALS

Claimant: Ms M Jankovski

Respondent: PGD Food Services Limited

JUDGMENT ON RECONSIDERATION APPLICATION

INTRODUCTION

1. The Tribunal conducted a preliminary hearing by CVP link from Southampton on 6 May 2021. The issues under consideration were whether the Claimant's claims of unfair dismissal, breach of contract and for a compensation payment in respect of untaken leave were brought within time and, if not, whether the time for bringing the claim should be extended. The parties were unrepresented. After hearing evidence from the Claimant, Mr. Sandford and the Respondent's director and after considering the submissions of the parties the Tribunal gave its Judgment and reasons orally to the parties on the morning of the hearing and the judgment was duly sent to the parties.

2. The judgment was as follows:

"1. The Claimant's claim that she was constructively unfairly dismissed by the Respondent on 14 February 2020 is made out of time and it was reasonably practicable for the claim to have been brought in time and it is, therefore, struck out for want of jurisdiction.

2. The Claimant's claim that the Respondent breached her contract of employment by failing to pay her notice pay up to the EDT on 14 February 2020 is made out of time and it was reasonably practicable for the claim to have been brought in time and it is, therefore, struck out for want of jurisdiction.

3. The Claimant's claim that the Respondent failed to pay her compensation for untaken annual leave as at 14 February 2020 is made out of time and it was reasonably practicable for the claim to have been brought in time and it is, therefore, struck out for want of jurisdiction."

3. On 8 May 2021 the Claimant corresponded with the Employment Tribunal by email and made an application for reconsideration of the original judgment.

BACKGROUND

4. The Claimant resigned from her employment with effect from 14 February 2020. She commenced her proceedings in the Bristol Employment Tribunal on 24 July 2020. The claims were, therefore, all made outside the statutory time limit but the Tribunal had a discretion to extend time for bringing the claims if it decided it was not reasonably practicable to have brought the claims in time.
5. The Tribunal, after hearing all the evidence and giving due consideration to the submissions made by the parties, found as a fact that it was reasonably practicable to have brought the claims in time and the claims were, therefore, struck out for want of jurisdiction. This was all explained to the parties in the oral reasons given on the day.

LEGAL PRINCIPLES ON RECONSIDERATION APPLICATIONS

6. The provisions governing applications for reconsideration are set out in rules 70-72 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (hereinafter referred to as the Rules).
7. Rule 70 states that a judgment may only be reconsidered if it is in the interests of justice to do so.
8. Rule 71 requires a party who seeks reconsideration to send a written application to the Tribunal explaining why reconsideration is necessary within 14 days of the date upon which the original judgment had been sent to the parties.
9. Under rule 72 when considering an application for reconsideration I have to consider whether there is a reasonable prospect of the Judgment being varied or revoked.

FINDINGS ON THE GROUNDS OF THE APPLICATION

10. The Claimant states that her “*case was marked as ‘withdrawn’. I do not know what this means, in reality, and whether this affects any reconsideration or the case of my partner, Nicholas Sandford, scheduled for September 2020. I did not request this.*”
11. I do not know what this refers to. The Claimant’s claims were dismissed and the judgment has no bearing on the claims made by Mr. Sandford.

12. Thereafter, the Claimant makes a number of assertions about the evidence given at the hearing as follows: *“My evidence and that of my witness, Mr Nicholas Sandford, was not considered. I was questioned whether I understood the submission date deadlines. I clearly stated in my statement that I knew the dates and was aware that my submission period had expired and this was not the reason for my late submission. I was asked this more than once. However, our statements containing contextual information and evidence were considered to be ‘not relevant’.*

I was also asked more than once to give precise dates regarding any legal advice I had had. I answered clearly that the advice I had had was not related to the preliminary hearing and gave full detail about what attempts I had made via CAB and ACAS to access guidance for the hearing, the advice I had received in January 2020 and in December 2020 when PGD Food Services threatened a civil claim case. I also confirmed I asked for a legal response to be sent to the Employer’s Counter Claim as I did not understand what was required of me.

By contrast, the reasons I gave that my mental health was impacted and also that my partner, Nicholas Sandford, had asked me to drop my case were not interrogated with the same attention. In fact, Nicholas Sandford was not asked any questions at all by the judge.

Nicholas Sandford had asked me to drop the case as he was fearful of losing his job at the same employer and this was clearly stated in his statement along with his evidence that he considered I was not emotionally capable of dealing with an Employment Tribunal.

Given that I was asked to be detailed about non-relevant issues, These points, which were central to my submission were not covered.

The judgement was that if I was able to work 25-40 hours per week and complete hand written delivery notes, then I was capable of submitting ET documents. I believe this is not a correct evaluation of mental health. There is a huge difference in the ability to drive a van, clean floors or move sacks of vegetables – or hand writing a simple delivery note - without specific responsibilities, to holding down a job during a period of mental ill health or indeed complete emotionally traumatic documents.

I clearly stated that I felt overwhelmed during this period, which was during Covid and this work gave me stability and routine – this is totally different to being able to write detailed and concise documents, going through old emails and messages, reliving the experiences which caused me to break down in the first place and had been exacerbated for months by the behaviour of the PGD directors. I confirmed I was suffering from depression at that time and I was suffering from the symptoms of stress and anxiety and these points were not questioned. Had this point been sufficiently interrogated then I would have been able to confirm that the work I was doing I was able to do without any thought, having worked with the farms for 10 years and I was not operating

complex ordering or customer service. I had been a small business owner and it was incomprehensible that I would have been well enough to carry out a 'proper' job and to describe how exhausting and overwhelming it is to experience symptoms of anxiety and stress, such as insomnia and tinnitus and being frequently reduced to tears, as stated in the hearing.

I had sought separation from my partner of 17 years due to the stress and anxiety caused. I believe this is sufficient evidence to demonstrate the state of my mental health and that I was simply not able to complete ET documents, particularly as I did not have the support of my partner."

13. The evidence of the Claimant and Mr. Sandford were properly and fully considered but ultimately findings of fact were made that it was reasonably practicable to have brought the claims in time. The Claimant cannot now seek to repeat the same points and the evidence by way of an application for reconsideration. She had a full opportunity to present her case at the hearing which she did.
14. The Claimant then asserts that, *"Dray Simpson, my previous employer, did not respond to my messages to agree exchange of information prior to the preliminary hearing, despite my chasing. This was very upsetting as I had to embark on the hearing without knowing whether they would be submitting any evidence or whether he would even turn up. I was not aware I would not be allowed to ask him any questions given he had not provided evidence."*
15. Firstly, the Claimant presented a bundle of documents which she relied upon containing all the relevant information. Secondly, the recollection of the Tribunal is that Mr. Simpson did give evidence albeit he could add nothing of relevance and the Claimant would have been permitted to ask him relevant questions on anything he had added which was relevant. The fact is, however, that Mr. Simpson could add nothing to the matter because the issues concerned the actions of the Claimant alone. If the position was that Mr. Simpson had not given evidence then this issue does not arise in any event because he could not have been compelled to give evidence..
16. The Claimant mentions that *"Dray Simpson clearly had people in the room with him during the hearing, which was off putting. He did not appear to take the case seriously, which was very distressing and impacted on my ability, particularly regarding summing up, as below."* In fact, on one occasion it appeared as though someone had entered the room but that was only fleetingly and the matter proceeded satisfactorily thereafter.
17. The Claimant asserts that *"I feel there was a bias towards Dray Simpson. Having requested his civil case be struck out, this was not, on the basis that he was not legally qualified to decide whether he wished it to be heard. Dray Simpson had access to unlimited legal advice prior to the case, as specified in the agenda notes, and elected not to engage with the court or respond to contact prior to the hearing in order to agree evidence and content."*

By contrast, I did not have legal advice and yet the focus appeared to be around this point. I stated in the hearing that I had downloaded templates from law sites and had to use Google to compile the bundle. I also made it clear that I did not have funds to seek legal advice other the essential times stated above. The legal firm I used to respond to statements above would corroborate that I did not receive their services for this preliminary hearing.

I was asked to sum up following my statement. I had not been sent specific guidance notes and I was not aware I would be required to do this, so clearly had not prepared a summary. It is not reasonable to expect a lay person to be confidence enough to coherently sum up an emotionally charged experience in a court situation without prior preparation.”

18. There was no bias towards the Respondent. The allegation is entirely without foundation. Furthermore, the remaining matters set out above by the Claimant are either irrelevant i.e. the position vis a vis the counterclaim or simply a further attempt to reopen the case which has no merit or a complaint that the Claimant should not have been expected to sum up her case which is also without merit. The Claimant was given every opportunity to present her case.

19. The Claimant continues to contend matters which seek to reopen the merits of the case as follows *“When Nicholas Sandford found his role abruptly terminated by PGD Food Services Ltd on 31/06/2020, he contested their termination reasons and started action to recover unpaid furlough and salary payments. Given his decision and only from that point I had his support to help me, I submitted my ACAS submission immediately and as quickly as I was able to do so. I am not a lawyer and I thought that having requested the certificate, that this was the start of action and I would not be negatively judged for taking time to complete the ET documents properly.*

We did not have access to legal advice, and it took me some days to complete the ET1 form as I was still struggling with depression and this is a complicated document to write methodically and concisely. As mentioned, I completely was under the impression that it was perfectly permissible to take up to 28 days to complete the form having started the action with ACAS.”

20. This is again an attempt to reopen the merits of the case and is wholly without merit. The evidence was heard fully and duly considered.

CONCLUSIONS

21. The application for reconsideration is wholly without merit. There would be no prospect of the original decision being varied or revoked. It is not in the interests of justice to reconsider the judgment.

**Employment Judge Walters
Dated : 11 June 2021**