EMPLOYMENT TRIBUNALS

Claimant: Mr R Hempsell

Respondent: Cadent Gas Limited

JUDGMENT
ON A RECONSIDERATION

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

REASONS

1. The Claimant presented a claim to the Tribunal on 5 July 2020 alleging disability discrimination, sex discrimination, detrimental treatment as a result of whistleblowing/health & safety, unauthorised deductions from wages and failure to pay holiday pay.

2. The Claimant was employed by the Respondent at the time of submitting his claim but was subsequently dismissed on 7 June 2021. He made an application for interim relief on 9 June 2021 on the premise that he was dismissed for raising health and safety concerns and making a protected disclosure. His application was not accompanied by a new claim form in respect of a claim for unfair dismissal. His application came before me and I determined as follows:

   "The Claimant's application for interim relief dated 9 June 2021 and the Respondent's comments on it dated 15 June 2021 have been placed before Employment Judge Victoria Butler who directs:

   The Claimant's application for interim relief cannot be considered by the Tribunal. An application for interim relief must be presented, along with the claim form (ET1) claiming unfair dismissal, by the end of seven days immediately following the effective date of termination.

   The Claimant has not presented an ET1 claiming unfair dismissal and, therefore, the right to apply for interim relief is not engaged."

3. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provide:

   Principles

   70. *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*

   Application

   71. *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

   Process

   72.*— (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application……..*

4. Rule 1 of the Employment Tribunal Rules 2013 sets out the following interpretations:

   'a "judgment", being a decision, made at any stage of the proceedings which finally determines a claim or part of a claim as regards liability, remedy or costs but also any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so, for example an issue whether a claim should be struck out or a jurisdictional issue'.

   "claim" means any proceedings before an Employment Tribunal making a complaint;

   "complaint" means anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Tribunal.'

5. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural

irregularity depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.

<u>The application</u>

6. The Claimant has asked me to reconsider the judgment on 15 June 2021. Within his application he says:

   "…………Whist I accept that this is a new claim and not a relabelling of facts, I strongly believe that the claims are related. For this reason, I have asked for the claim of unfair dismissal, amongst others, to be added as an amendment. This is allowed as stated in the Presidential Guidance General Case Management. Therefore I assumed that the unfair dismissal relates to the existing ET1 which has already been filed. Similarly, I believe the claim for interim relief also related to that ET1 as it was in relation to the claim for unfair dismissal. The court was notified of the change of circumstance/further claims within seven days and an ET1 already exists that relates to the matters that my dismissal was based upon. The matters are connected without doubt. I therefore thought that the Rules of Presidential Guidance had been followed. These being that: an ET1 exists and has already been submitted, the additional claims relate to the existing claims brought on the ET1 filed in 2020, the interim relief claim relates to the claim filed/proposed to be filed on the current/relevant ET1 form and the Tribunal were notified of this within seven days……

   I did ask the Employment Tribunal if other actions need to be taken by me in order for interim relief to be considered. This email received today is the first response from the court to my claim and questions. Had I been notified sooner, within the time limit, an additional ET1 could have been filed or the original ET1 already in the Tribunal's possession could have been presented again for the Judge to consider……..."

7. The Claimant submitted a new ET1 claiming unfair dismissal, amongst others, things on 17 June 2021.

<u>Considerations</u>

8. The right to claim interim relief (relevant to the Claimant's circumstances) is found in s.128(1) Employment Rights Act 1996 ("ERA") which provides:

   "(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

   (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

   (i) <u>section 100(1)(a) and (b)</u>, <u>101A(1)(d)</u>, <u>102(1)</u>, <u>103 or 103A</u>, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met, may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so".

9. The Tribunal does not have jurisdiction to extend the time limit of seven days for any reason save possibly where there has been deliberate fraud by the employer which has caused the employee to suffer a real injustice by missing the time limit (which is not alleged here).

10. The Claimant does not dispute that he failed to present a claim of unfair dismissal at he the time of making his application. However, he says that he asked for the claim of *'unfair dismissal amongst others, to be added to the claim as an amendment'.*

11. I have reviewed his original application within which he explains that he was dismissed by the Respondent and although the reason for his dismissal was not clear to him '*it certainly relates to my claims brought to the Employment Tribunal, including discrimination, victimisation, suffering a detriment and/or dismissal due to exercising rights under the Public Interest Disclosure Act. These have already been brought to the court's attention although a further preliminary hearing needs scheduling to have some of those claims relabelled……For this reason I would now like to bring further claims to the Employment Tribunal. These are breach of contract, unfair dismissal after exercising or claiming a statutory right, suffering a detriment/dismissal after exercising rights under the Public Interest Disclosure Act and suffering a detriment/dismissal for health and safety reasons".*

12. This in itself is insufficient to amount to a formal application to amend as the Claimant has not set out the proposed amendment. Even if the Claimant had submitted a valid application to amend to include a claim of unfair dismissal, such application was not determined before the end of the seven-day time limit.

Accordingly, there was no valid claim of unfair dismissal before the Tribunal at the time he made the application for interim relief.

13. Further, the fact that the Claimant's dismissal relates to matters already pleaded does not circumvent the need for a valid claim of unfair dismissal to be presented to the Tribunal.

14. The Claimant complains that he asked the Tribunal what other actions he needed to take before his application could be considered and had he been notified sooner he could have filed a further ET1 *"or the original ET1 already in the Tribunal's possession could have been presented again for the Judge to consider".*

15. The Tribunal's role is not to provide advice to parties, and it is incumbent on the party wishing to make such an application to seek their own advice in the event of any uncertainty about the steps they are required to take. Turning to the Claimant's second proposition, even if the original ET1 was '*presented again*', I observe the following: firstly, the proposed amendments were not articulated with the detail that would have allowed me to consider the amendment and secondly, it is clearly a substantial amendment to the claim requiring me to seek comments from the Respondent before determining such application. Accordingly, and as above, there was no valid claim of unfair dismissal before the Tribunal at the time the application for interim relief was made.

<u>Conclusion</u>

16. S.128(1) ERA provides that a Claimant must present a claim of unfair dismissal in order to make an application for interim relief. The time limit for making the application is within seven days of the effective date of termination and there is no discretion to extend time. The Claimant failed to comply with those requirements, and I am satisfied that the Claimant has not advanced any special circumstances which persuade me that it would be in the interests of justice to reconsider my original decision.

17. Having considered all the points made by the Claimant, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked and it is not in the interests of justice to reconsider it. The application for a reconsideration is, therefore, refused.

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Employment Judge Victoria Butler

Date: 29 June 2021

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