EMPLOYMENT TRIBUNALS

Claimant: Ms M M Ojobowale

Respondent: G4s Facilities Management (uk) Limited

JUDGMENT

The Respondent's application dated 30 June 2020 for reconsideration of the decision sent to the parties on 30 June 2020 not to postpone the final hearing listed on 9 and 10 July 2020 is refused.

REASONS

The Respondent made a timeous application for a consideration under Rule 71 of the Employment Tribunal Rules of Procedure 2013. I have considered the grounds of the application and conclude that it is not necessary in the interests of justice to reconsider the decision dated 30 Jun 2020 to refuse the postponement of the final hearing on 9 and 10 July 2020. None of the matters raised by the Respondent is such that it would give any reasonable prospect of original decision being varied or revoked. Accordingly, the application for a reconsideration is refused under rules 70 and 72.

The Respondent raises five principal points in its application dated 30 June 2020: (1) the case is not ready for final hearing as the issues are not agreed; (2) there is a second claim which is inextricably linked; (3) not all documents have been provided by the Claimant; (4) the time estimate is too short and the case will go part-heard and (5) the case is not suitable for remote hearing. The Respondent submits that proceeding with the hearing will cause it prejudice such that it will not get a fair trial and that postponement is in accordance with the overriding objective.

The Claimant opposes the application for reconsideration (as she did the proposed adjournment) on grounds that: (1) there will be undue delay if it is postponed and relisted, with a harmful impact on the Claimant's mental health; (2) the Claimant intends to issue a second claim but it is factually discrete; (3) the documents in

question were only requested by the Respondent on 25 June 2020; and (4) if dealing with the first claim only, the bundle is short and the Claimant's witnesses are brief.

In deciding not to postpone the hearing, I balanced the prejudice between the parties and decided that the prejudice caused by the delay outweighed the prejudice to the Respondent of late disclosure of documents relevant to remedy and hearing the two claims separately. I had regard to the overriding objective and the right of both parties to a fair trial.

The basis of the Respondent's application for adjournment has developed from the first letter on 10 June 2020 (where it made no reference to the Occupational Health referral, relying simply on the risk of going part-heard and the ongoing internal process which may lead to amendment) to its current position. I have carefully considered the points raised by the Respondent but do not consider that they give grounds for me to reconsider my decision to refuse the postponement.
The dispute about the issues (whether the "something" identified by the Claimant arises from disability) is a matter for submission. The only other outstanding issue in preparing is the medical evidence. The medical notes about PTSD are relevant to remedy and this is a liability only hearing. The Occupational Health referral was only requested after the initial application to postpone was made, its contents are set out in the subsequent report, the Claimant has agreed to provide consent and is co-operating to provide the same without delay. The final hearing has been listed since 24/2/20. Any prejudice caused to the Respondent by late provision of the referral itself is minimal and is caused by its own conduct.

The Claimant intends to issue a second claim but it is not clear that she has yet done so, certainly none has been served on the Respondent as yet. The events of the first claim will be relevant background in the second claim and there may be some commonality of evidence, for example that of Ms Sotumani, but the issues and legal claims appear to be different. Both may be about return to work in the broad sense, but the first claim will consider why the position up to November 2019 and the second claim will consider the position in the process which commenced on 18 March 2020. To wait until the second claim is presented, served, responded to, consolidated with this, subject to case management and listed will cause delay, not least as the time estimate will necessarily be increased to four days and therefore could not be listed until June 2021.

Any possible prejudice caused by having two separate hearings, inconsistency or the cost of duplicating evidence for example, is substantially mitigated by the same Judge (and members if possible) hearing both claims. The length of time required in the hearing of the second claim will be reduced as the Judge will already be familiar with its factual background and some relevant disputes of fact will have been determined on the evidence which would have been prepared if the second claim had not been intimated. Further, the two claims will have separate hearings. This is not, as the Respondent appears to think, a case where the first claim will go part heard and conclude with the hearing of the second claim.

There is a risk that the case will go part-heard and I accept that this would cause prejudice to the Respondent if unable to speak to its witnesses during any gap. However, this prejudice is reduced by limiting the evidence to the issues which are relevant and given the relatively small bundle of documents it seems likely that only half a day at most will be required for reading. The Judge will ensure

appropriate timetabling and the parties have a responsibility to ensure that their cross-examination and submissions are proportionate to the issues. If a further day were genuinely to be required (for example for deliberation, or even submissions and deliberation), this could be rescheduled swiftly within a matter of days or weeks rather than months. By contrast, a postponement would lead to substantial delay and prejudice to both parties given its effect upon the cogency of the evidence relating to conduct dating back to 2018 and the effect of the additional worry caused by uncertainty in an ongoing employment relationship.

Finally, the Claimant has said that she is able to participate in a remote hearing by way of lip reading and with the help of somebody supporting her during the hearing. The Respondent's belief that a Tribunal appointed interpreter is required was first raised in the response to the Claimant's objection to this reconsideration. EJ Massarella's summary records at paragraph 13 that if the hearing were in person, the required adjustment would be for the Claimant to be accompanied by someone who could sit next to her and repeat what is being said by others loudly and clearly. That is the same process as in a remote hearing where the Claimant's companion can be required to be clearly within sight throughout her evidence and any intervention therefore seen and heard. The Claimant's representative has not raised any concern about access to documents (for example, a paper bundle can be used).

For all of these reasons, the application is refused. The hearing will proceed. The parties must ensure that the bundle is sent in electronic format to the Tribunal not later than 4pm on 7 July 2020. The representatives must liaise to agree a timetable for the evidence to be completed by the end of 10 July 2020 and be prepared to discuss the same with the Tribunal on the first day of the hearing.

Employment Judge Russell

Date 03/07/2020