



EMPLOYMENT TRIBUNALS

Claimant: Ms Bryce

Respondent: Department of Work and Pensions

JUDGMENT

The claimant's application dated 5 July 2021 of reconsideration of the judgment sent to the parties on 21 June 2021 is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the following reasons.
2. The following claims were struck out in a judgment sent to parties on 12 June 2021 for failure to pay a deposit:
 1. Indirect discrimination based on the respondent's refusal to postpone the disciplinary hearing on 5 July 2020;
 2. The claim for failure to make reasonable adjustments; and
 3. The claim for breach of s 10 EReA 1999;
3. The background facts are set out in the judgment sent to the parties on 12 June 2021 as follows:
 - 3.1. The claimant was ordered to pay a deposit of £130 in relation to each of those claims following a preliminary hearing held on 13 May 2021. The Order was sent to the claimant on 14 May 2021. The claimant failed to pay this deposit by the date specified in the order (21 days from the date the order was sent to the parties, i.e. 4 June).
 - 3.2. According to the Bristol Finance Support Centre, the claimant paid an amount of £260 on 7 June 2021. The claimant has not indicated to which claims this payment is intended to relate. No explanation has been provided as to why the payment was made late, nor has any application for an extension of time been made by the claimant.
4. The additional information provided in the application for reconsideration, and the claimant's subsequent email of 12 July, is twofold:

- 4.1. That the deposit relates to the claims of failure to make reasonable adjustments and for breach of s 10 EReIA 1999 and the claimant is not pursuing the complaint of indirect discrimination, and
 - 4.2. That the payment was made in time, because it was posted on 4 June 2021 and the tribunal officer only accepts cheques and postal orders.
5. When considering whether to strike out the claim, I considered all the circumstances and the balance of prejudice. In particular I considered that the deposit order made clear the date by which payment has to be made, and the consequences of not making the payment by that date. The purpose of a deposit order is to discourage the pursuit of claims with little prospects of success. Although the claimant will not be able to pursue her claim if it is struck out, the claimant could have avoided this simply by paying the deposit by the specified date. I noted that she had failed to do so, without explanation.
6. The application for reconsideration does not provide an explanation for the delay. It simply states that the payment was made in time. This is not a sustainable argument. The order is to 'pay' the deposit, which means that the cheque has to be put in the hands of the Finance Support Centre. Putting the cheque in the post is not paying the deposit.
7. There is therefore no reasonable prospect of the original decision being varied or revoked.
8. Although this has not been argued by the claimant, I have also considered whether there is any reasonable prospect of the original decision being varied or revoked on the basis that the claimant sent the cheque on 4 June because she was operating on a mistaken assumption that the deadline could be complied with by putting the cheque in the post by the relevant date. It could be argued that this provides the explanation as to why the deposit was paid late.
9. The claimant's interpretation is not, in my view, a reasonable interpretation. The legal meaning of 'pay' accords with the everyday meaning of that word. It means to give or handover or transfer money to someone, not simply to place a cheque in the post. It is generally understood that if there is a deadline for paying something, for example a fine, if the sender decides to send payment by post then they must allow time for delivery.
10. Although it may be inconvenient that there is no option to pay in any other manner than cheque or postal order, this is made clear in the deposit order. This inconvenience does not justify an assumption, without checking, that the deposit is 'paid' on the day that it is posted. The claimant simply posted the deposit on the date that the payment was due without allowing any days for delivery, or checking her understanding with the tribunal or the finance office.
11. On the basis of the above I determine that there is no reasonable prospect of a different conclusion on the balance of prejudice or the interests of justice and therefore there is no reasonable prospect of the decision being varied or revoked even if the application were argued on the basis of the claimant's misunderstanding of the rules.
12. On that basis the complaints of (i) indirect discrimination based on the respondent's refusal to postpone the disciplinary hearing on 5 July 2020; (ii) The claim for failure to pay reasonable adjustments and (iii) the claim for breach of s 10 EReIA 1999 remain struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013.

Date: 23 July 2021