



EMPLOYMENT TRIBUNALS

Claimant: Miss A Tariq

Respondent: Smart NYD Limited t/a New York Diner

JUDGMENT

The claimant's application dated 12 July 2021 for reconsideration of the judgment sent to the parties on 28 June 2021 is refused.

REASONS

1. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provide that a Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

2. This is a consideration under rule 72(1) of the Employment Tribunals Rules of Procedure 2013 as to whether there is any reasonable prospect of my decision being varied or revoked on the basis of the claimant's application dated 12 July 2021. If I do not consider there is any reasonable prospect of the decision being varied or revoked, the claimant's application must be refused.

3. The judgment refused applications to amend the claim, held that the Tribunal did not have jurisdiction to consider certain complaints and held that the Tribunal did have jurisdiction to consider certain other complaints of discrimination, on the basis set out in that judgment.

4. It appears that the claimant is asking for reconsideration of points 1, 2, 4 and 5 of the judgment.

5. In large part, the claimant's application reiterates evidence given at the hearing and argues that I should have reached different conclusions on the basis of this evidence.

6. The claimant points, in particular, to what she considers to be an inconsistency in my reasoning in allowing certain complaints to be considered out of time, but not others. What the claimant considers to be inconsistency between my approach for the s.103A Employment Rights Act unfair dismissal complaint and other non-discrimination complaints and my approach to some of the discrimination complaints is a result of the different legal tests I had to apply. For discrimination complaints I had to consider whether it was “just and equitable” in all the circumstances to consider complaints out of time; for the s.103A Employment Rights Act unfair dismissal complaint and other non-discrimination complaints, the test is whether it was “reasonably practicable” to present the claim in time. The “reasonably practicable” test is a more difficult hurdle to overcome than the “just and equitable” test. I explained in my reasons (paragraphs 16-21) why I considered it just and equitable to allow certain complaints of discrimination to be heard but not others. Having considered what the claimant has written, I do not consider there is any reasonable prospect of my decision as to which complaints the Tribunal has jurisdiction to consider and which it does not being varied or revoked.

7. My decision that the amendment application should be refused took a consistent approach to the time limit issue which required application of the “reasonably practicable” approach. Having considered what the claimant has written, I do not consider there is any reasonable prospect of my decision on the amendment application being varied or revoked.

8. I, therefore, refuse the claimant’s application for reconsideration.

9. The claimant has made a number of allegations about my conduct in her application. Whilst these are not relevant to whether I correctly applied the law to the facts in reaching my decisions, I make the following comments in response.

10. The claimant alleges that I told her to stop making accusations when she said Ms Khan was laughing. I do not have a note of the exchange but consider it unlikely that I used those words. My best recollection is that Ms Khan denied laughing and I said words to the effect that I had not noticed Ms Khan behaving in this way.

11. The claimant appears to suggest some irregularity in her being required to take an oath, whereas Ms Khan was not required to do so. The claimant was required to take an oath (or an affirmation – she was given the choice) because she was giving evidence. Ms Khan was not giving evidence so was not required to take an oath or affirmation.

12. I am unclear whether the claimant is suggesting that, during the hearing, Ms Khan was making disgusting allegations that the claimant’s mother was abusing her. I have no note or recollection of Ms Khan making such an accusation. I consider it likely I would have made a note of this or recalled this, had that been said during the hearing.

13. It is correct that I raised a concern that the claimant’s mother might be assisting her when she was giving evidence, since I could hear someone off camera speaking to the claimant during her evidence. I do not recall Ms Khan

making any remark about them being in it together. I did not hear or see Ms Khan and her husband laughing and whispering together. If I had considered there was any inappropriate conduct, I would have stopped it. In any event, Ms Khan was not giving evidence so the same concern about whether she was being assisted did not arise.

Employment Judge Slater

Date: 13 August 2021

JUDGMENT SENT TO THE PARTIES ON

18 August 2021

FOR THE TRIBUNAL OFFICE