



EMPLOYMENT TRIBUNALS

Claimant: Ms F Thorn

Respondent: Nationwide Building Society

JUDGMENT ON APPLICATION FOR RECONSIDERATION

Having considered the claimants application and having reconsidered the Judgment , the original Judgment of the tribunal is confirmed.

REASONS

1. In a letter of the 15 April 2021 the claimant applied to have a settlement agreement which she had signed with the respondents in January 2014 set aside. The application was considered by me at a preliminary hearing which took place on the 29th and 30th of April 2021 , with the agreement of the parties .
2. Having heard representations from the claimant and from the respondent I rejected the claimants application to set aside the settlement agreement and gave my reasons verbally the same day.
3. Following the sending out of the short form judgement the claimant wrote to the tribunal asking for a reconsideration of that judgement.
4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 (“the Rules”). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

5. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
6. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
7. I have considered the claimants application under rule 70,71 and 72 of Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 and determined that because she was alleging that new information had come to light since my decision and that the information had not been available to her previously, that I would reconsider my decision.
8. I therefore wrote to the parties directing the respondent to provide any response to the claimant's application by the 18 June 2021 and informing the parties that the matter would be determined on the papers unless either party objected.
9. The respondent made written submissions on 27 May 2021 in respect of the claimant's application and neither party objected to me making my decision on the basis of the papers.
10. I have therefore considered the claimants application and following a further consideration of my judgement I have determined as follows.
11. Section 203(3) of the Employment Rights Act 1996 requires that a settlement agreement is in writing ;relates to particular proceedings; the claimant has received advice on the effect of the settlement on her ability to pursue proceedings from a person who is a recognised advisor and who has certificate insurance in place and who is identified in the agreement. The agreement must state that the conditions of section 203 ERA 1996 have been satisfied.
12. In this case at the hearing in April 2021, I determined on the basis of the evidence before me that all of these criteria were satisfied and, on that basis, that there were no grounds for setting aside the settlement agreement.
13. The claimant's application for reconsideration raises a question about the terms of the settlement agreement. She alleges that the agreement does not accurately reflect or comply with a job security policy which the respondents had in place at the time that she signed the agreement. The new document which she produced was the document which she says was the correct policy the terms of which she says should have been reflected in the settlement agreement she signed.

14. This was not a ground on which she made her application, or a claim or criticism that she made before me in April 2021 either in her written application or in her submissions.
15. I have therefore considered whether the document, or what the claimant says about it, has any impact on the decision which I made that the settlement agreement was a valid and binding agreement.
16. What the claimant now says is that because the settlement agreement includes a reference to job security policy, and because the claimant is now facing possible redundancy for a second time that she may be disadvantaged because in calculation of termination payments. She says that the new document which she has sent to the tribunal and the respondent is the document which she says is the correct job security policy and which she says should have been reflected in the settlement agreement she signed.
17. I have considered both the term of the settlement agreement which the claimant refers to and the job security policy which she has now disclosed.
18. The effect of the respondent's job security policy is to enable an employee who signs a compromise agreement on termination of employment, to re-join the respondent as an employee and keep any money paid to them, but also retain continuity of employment from former employment in certain circumstances. Having looked at the dates of the policy and the relevant term in the settlement agreement I accept that it may well be arguable that the settlement agreement does not reflect the policy of the respondent which was current at the time.
19. I have no evidence before me and no submissions before me as to why or indeed whether either or both parties may have made a mistake in this respect.
20. However, the claimant's application made before me on the 29th and 30th of April did not raise any question at all of whether or not version four or version five were correctly or incorrectly included within the settlement agreement.
21. The claimant was advised on the contract and the effect of the contract before she signed it. Even if there is a mistake, and I do not have sufficient information to determine this matter, the subject matter of the contract remains unaffected, and the main purpose of the contract remains capable of performance by both parties.
22. I observe that to date the contract has been performed by both parties. The claimant has received the payment under the contract and remains bound by the terms of it. The respondent, having made the payment,

remains protected from further litigation in respect of any of the matters covered by the contract, which took place up until the date the contract was signed.

23. The difference that the slight variation in the policy may make is to the claimants future entitlements in the event that she faces redundancy.
24. The provisions of section 103 ERA 1996, and the findings I have made and the conclusions that I have drawn from them are not affected at all by the disclosure of this document, or its factual content. Those findings remain correct and unaltered, and my conclusions therefore also remain unchanged.
25. In these circumstances and taking account of regulation 72 of the Employment Tribunal Rules 2013, I have determined that my original judgement is correct and I therefore confirm it.

Employment Judge Rayner
Date: 28 July 2021

Judgment sent to the parties: 20 August 2021

FOR THE TRIBUNAL OFFICE