



EMPLOYMENT TRIBUNALS

Claimant: Ms S Ryan

Respondent: Essex Partnership University NHS Foundation Trust

DECISION FOLLOWING RECONSIDERATION **Rules 70-73 Employment Tribunals (Constitution and Rules of Procedure)** **Regulations 2013**

The Claimant's application dated 6 August 2021 for reconsideration of my judgment dated 2 August 2021 and sent to the parties on 3 August 2021 is REFUSED. I consider that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

- 1 The Claimant brings one claim which is for damages for breach of contract under Employment Tribunals (Extension of Jurisdiction) Order 1994 because she says that she was not given the full period of contractual notice to which she was entitled at the date of the termination of her employment on 31 March 2020.
- 2 Her claim was filed substantially out of time. The ET1 Claim was lodged on 16 February 2021 almost one year later. The Judgment sets out my decision that, although I am satisfied that it was not reasonably practicable for her to have brought her claim within the primary time limit she thereafter failed to lodge her claim within such further period as I consider reasonable. Consequently I found that an Employment Tribunal has no jurisdiction to hear the claim because it is out of time and it was dismissed.
- 3 The Claimant's application for reconsideration sets out three grounds which I will address in turn. I have also read the Respondent's response to the reconsideration application which is set out in an email dated 23 August 2021 timed at 17:15 from the Respondent's solicitor Ms Streets. The Claimant replied the same day at 18:52 :-
- 4 First the Claimant says that there was a '*misunderstanding*' of her '*mental health condition*' which is moderately severe and chronic depression with variable symptoms. I cannot agree with this contention. The Claimant gave evidence on her

own behalf using the video CVP facility and was cross examined. She prepared a written witness statement which is contained within a Preliminary Hearing (PH) Bundle consisting of 173 pages and which includes her GP medical notes for the relevant period. The content of that PH Bundle was discussed and agreed between the parties. I was therefore supplied with and duly considered that comprehensive information about the Claimant's mental health difficulties.

- 5 The second and third paragraphs of the Respondent's email of 23 August 2021 sets out the process and dialogue by which the parties identified and agreed the content of the PH Bundle with the Claimant's full participation. The Claimant concedes in her reply that she does not allege that any documents were intentionally omitted from the PH Bundle by the Respondent which had the responsibility of preparing the documents. She states clearly that there was a mistake by her and an '*error on my part*' and '*I did not check the document bundle thoroughly enough*' when a Mental Health Team letter of 25 February 2021 was not included.
- 6 I am satisfied that I heard detailed evidence and had sufficient knowledge and understanding of the Claimant's mental health difficulties following the effective date of termination of her employment. I therefore appreciated the difficulties she had in complying with the primary time limit under the 1994 Order and my judgment reflects that finding.
- 7 However I was satisfied by reference to the evidence in the agreed PH bundle that by the end of November 2020 when she obtained new employment and by reference to her GP's note of 16 December 2020 the Claimant's health had improved sufficiently to enable her to pursue her claim. She described herself in her written evidence as improving when '*my medication levelled out in January 2021 as per GP Notes page 3 13 Jan 2021*' and in her oral evidence as '*much stronger*' by mid-January 2021. Her GP's notes record encouraging progress in her condition on 13 January and 8 February 2021. She still did not take any formal steps to lodge her claim until mid- February 2021 but was then able to prepare a detailed four page Grounds of Complaint. In my judgment that was an unreasonably lengthy further period outside the primary time limit. The reasons for my decision were carefully explained to the Claimant at the Preliminary Hearing on 2 August 2021.
- 8 The Claimant asks me to reconsider my judgment by seeking to refer to evidence which was available at the time of the Preliminary Hearing but which she omitted to include amongst her documents to be placed in the joint PH Bundle. The evidence consists of a letter dated 25 February 2021 about her and her medication from the Mental Health Team.
- 9 I reiterate that this is not a new piece of evidence which has emerged since the PH and the promulgation of the judgment. There is no suggestion that this is new evidence having an important influence on the outcome of this case which could not reasonably have been known of or foreseen at the time of the Hearing. Instead the Claimant failed to discharge her individual responsibility to ensure that the letter was disclosed and placed in the PH bundle (despite several opportunities in

correspondence with the Respondent to ensure that the bundle was comprehensive and complete). No criticism of the Respondent is justified in the circumstances. The Claimant now seeks to correct her error and utilise this document to entirely re-argue her case. I conclude that it is not in the interests of justice, which principle applies to both parties, to permit her to have a second opportunity to put forward her arguments in relation to the time limit issue.

- 10 In addition the omitted evidence is unlikely to influence my decision. The letter of 25 February 2021 is dated 9 days after the date that the ET1 was filed. It therefore describes the Claimant's state of mental health at a later date and insofar as it refers retrospectively to the previous course of her illness and the drug therapy prescribed it does not negate or contradict the totality of the other evidence contained in her GP Notes which were properly disclosed and upon which I have relied in making my decision as stated in paragraph 8 above. The level of medication is only one factor in assessing the severity, nature and effects of mental health impairment.
- 11 The second ground for reconsideration is described by the Claimant as '*key evidence was missing from the evidence bundle*'. This seems to be a reference to the letter of 25 February 2021 (the omitted evidence) and I have set out above my reasons for refusal of the application for reconsideration on this ground.
- 12 The third reason given by the Claimant as to why I should reconsider my judgment is that '*key evidence was not reviewed*'. I understand that the Claimant wishes me to take account of the entirety of her submissions and references to evidence contained in paragraph 2 and the Conclusion and Summary set out in her 6 August 2021 application. In that part of the application she argues that her substantive claim does have a good prospect of success and that the evidence demonstrates its merits. Those arguments are however irrelevant to the judgment which the Claimant asks me to reconsider.
- 13 The PH was decided on the ground that the Tribunal had no jurisdiction to hear the Claimant's breach of contract claim because she had brought it outside the time limits prescribed by the 1994 Order. That is the reason why her claim was dismissed. The claim was not struck out on the ground of no reasonable prospect of success although I did give an indication that I considered the merits of the Claimant's case to be weak and that, if she had been permitted to pursue it out of time, she was likely to be unable to successfully resist a strike out or at least a deposit order.
- 14 The said indication as to the merits was given by way of an attempt to assist the Claimant in understanding why her claim was unlikely to succeed even if she had won on the time point. However I decline to address the full reasons for that merits assessment because, as stated, the prospects of success were not the reason for my judgment and therefore cannot be reviewed or reconsidered under Rule 70 of the Employment Tribunal Rules.

15 In all the circumstances the request for reconsideration fails.

**Employment Judge B Elgot
Date: 8 September 2021**