



EMPLOYMENT TRIBUNALS

Claimant

Mr J Kolawa

Respondent

v

(1) Great Bear Distribution Ltd
(2) Katanganika Thom Nymienda

Before: Employment Judge Laidler

JUDGMENT ON RECONSIDERATION

There is no reasonable prospect of the original decision being varied or revoked and the application is refused.

REASONS

1. This is the application of the claimant dated the 17 August 2021 to reconsider the judgment and reasons sent to the parties on the 4 August 2021. At paragraph 3 of the application the request is made to reconsider 'that there was no evidence to support the claimant's claim being made out of time'. No other findings or conclusions are challenged and referred to in the application. In considering the application the judge also had the respondent's submissions in opposition to it dated 2 September 2021.
2. As was made clear at paragraph 5 of the Reasons EJ Palmer had made it clear at his hearing on 14 October 2020 that the issue of whether there should be an extension of time granted for the claim against the second respondent would be dealt with at the full merits hearing. He stated, 'that issue has not been before me today and I have heard no representations or submissions in respect of it'.
3. Although EJ Palmer does record having had a skeleton argument from the claimant's representative this was not presented to the tribunal that heard the full merits hearing. The claimant's representative may well have sent it in after the hearing but as noted in the reasons it had not been seen by the

tribunal when it conducted its deliberations. A skeleton argument is not however evidence.

4. What the claimant's representative does not mention in his application is that the time point determined by E J Palmer related to whether the dismissal constituted a failure by the first respondent to deal with homophobic abuse suffered by the claimant was not in fact a claim that the claimant was actually bringing. That was clarified at this Hearing. The fact therefore that EJ Palmer had found it just and equitable to extend time in relation to that claim was irrelevant to the issues before this tribunal.
5. At paragraph 73 of its Reasons the tribunal concluded that no evidence had been advanced by the claimant as to why the claim was presented late and why it would be just and equitable to extend time.

Relevant Rules

6. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 states as follows:

Reconsideration of Judgments

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

- 72.— (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the

Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

- (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
- (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Conclusions

7. The overriding principle set out in the above provisions is whether it is necessary in the interests of justice to reconsider the judgment. The tribunal made it clear in its Reasons that it found inconsistencies in the claimant's evidence. Although it found there had been some name calling by the second respondent it did not have the effect upon the claimant set out in s.26(1)(b) Equality Act 2010 and the incident of the 17 January 2019 was not related to the claimant's sexual orientation but arose due to provocation by the claimant. If it had found harassment the tribunal would have found that the first respondent had complied with its obligations and entitled to rely on the s.109 defence. Even therefore, if the tribunal were found wrong in its conclusion on the extension of time point, the claimant would not succeed in this claim. It is therefore not in the interests of justice to reconsider the judgment.
8. There are other reasons however why the decision should not be varied or revoked. The fact that the tribunal might have had on its file the medical evidence the claimant seeks to rely upon (and/or that it was in its bundle) and the claimant's representative's skeleton argument does not make it 'evidence'. The claimant gave no evidence himself on the just and

equitable extension and the claimant's representative did not present his previously drafted skeleton argument to the Hearing.

9. There has not been, as is suggested in the application, an administrative error, an administrative 'mishap' or some error due to remote working in the pandemic. The tribunal has been working remotely since March 2020. The onus is on parties and their representatives to take the tribunal to documents they seek to rely on and even more importantly to put forward evidence in support of their case.
10. The skeleton argument was not 'evidence' and the claimant therefore cannot rely on the decision in Ladd v Marshall referred to.
11. For all these reasons the application to reconsider the decision is refused.

Employment Judge Laidler

Date: 8 September 2021

Sent to the parties on: 22 September 21
THY

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For the Tribunal Office