



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Clancy

v

Poolside Manor Limited

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") by letter on 13 August 2021 (also letters of 12 and 16 July) to reconsider the decisions made by the tribunal judge at the full merits hearing on 9 July 2021.

The Judgment of the Employment Tribunal is that the Judgment of 9 July 2021 and promulgated to the parties on 2 August 2021 is varied. The claimant's reconsideration application (hereinafter referred to as the Application) dated 13 August 2021 succeeds in part.

The claim for unfair dismissal remains dismissed on the grounds the claimant was employed with the respondent for less than two years and the tribunal does not have jurisdiction to hear it.

There will be a preliminary hearing to determine if the remaining claims are out of time; namely

- .1. Failing to provide written statements of employment particulars
- .2. Unauthorised deductions of wages, and
- .3. Breach of contract

Case management orders may be made at the close of the preliminary hearing.

It will be heard by an Employment Judge sitting alone at Watford Employment Tribunal on Thursday 13 December 2021 at 10am. [The claimant asserts she had technical issues during the CVP hearing, in the circumstances this case is not suitable for CVP].

REASONS

1. Under Rule 72 of the Employment Tribunals Rules of Procedure 2013, the Employment Judge has considered the Claimant's application for reconsideration and has determined that the judgment should be varied, because the claimant experienced technical issues during the hearing and was not afforded an opportunity to be heard.

2. I am satisfied that given the judgment was made in the absence of the claimant and I have sufficient information to consider the claimant's Application it is reasonable to do so without reference to the respondent.

9 July 2021 Full Mertis Hearing on the Cloud Virtual Platform

3. An hour before the hearing was due to commence the respondent sent a document entitled 'Respondent's note for final hearing on 9 July 2021'.
4. The claimant had received the document but it was in her junk mail folder. She asked for confirmation the respondent had received her revised statement and supplementary bundle. He had.
5. At 10:12 the hearing was adjourned until 10:25 to read the documents. The clerk put all parties into the CVP waiting room.
6. The claimant did not return at 10:25 and it was noted that she was not in the virtual waiting room. The court waited until 10:35 but there was no change; the claimant was still not in the virtual waiting room.
7. At 10:35 the hearing was adjourned until 10:45 for the clerk to make enquiries. The clerk telephoned the claimant and emailed her. Telephone calls went direct to voicemail where the clerk left a voice message. By 10:55 no response had been received from the claimant to either voicemail or email messages.
8. The respondent invited the court to proceed in absence in accordance with Rule 47.
9. Given the unsuccessful enquiries made by the clerk and the absence of any apparent attempt by the claimant to rejoin the hearing I continued the hearing in her absence.
10. In her Application the claimant asserts that following the adjournment at 10:12am:
 - 10.1. She waited a few minutes in the CVP waiting room/lobby.
 - 10.2. At 10:30am she was still waiting to be readmitted to the hearing.
 - 10.3. At some point she lost the connection.
 - 10.4. She repeated the steps to rejoin the hearing.
 - 10.5. She looked at her phone and saw she had 2 missed calls at 10:31 and 10:32 from the tribunal clerk.
 - 10.6. She noted that she had also received an email from the tribunal clerk at 10:37.
 - 10.7. At 11:13 she replied to the clerk's email.

Conclusion

11. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should be, so far as possible, finality of litigation.

12. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations.
13. The procedure upon an application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
14. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, Her Honour Judge Eady QC said “The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”
15. HHJ Eady also referred in that case to the rules for reconsideration set out in the previous Employment Tribunal rules of procedure: “...the 2004 ET Rules, which governed the review of Judgments and other decisions; in particular, Rule 34(3): “Subject to paragraph (4), decisions may be reviewed on the following grounds only —
 - (a) the decision was wrongly made as a result of an administrative error;
 - (b) a party did not receive notice of the proceedings leading to the decision;
 - (c) the decision was made in the absence of a party;
 - (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
 - (e) the interests of justice require such a review.”
16. Those remain useful examples of the circumstances in which a reconsideration might be appropriate but are all, in reality, examples of circumstances where it may be in the interests of justice to reconsider the decision.
17. Applying paragraph 15 above to the circumstances on 9 July 2021 and in particular (c) and (e) I find it is in the interests of justice to reconsider the judgment in the circumstances.
18. Having said that the Employment Tribunal Rules require the Employment Judge under Rule 27 to consider all of the documents held by the Tribunal in relation to the claim, to confirm whether there are arguable complaints and defences within the jurisdiction of the Tribunal (and for that purpose the Judge may order a party to provide further information). Under Rule 27(1) If the Employment Judge considers that the Tribunal has no jurisdiction to consider the claim, or part of it, the Tribunal shall send a notice to the parties— (a) setting out the Judge’s view and the reasons for it; and (b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.

- 19. It is my view that the tribunal does not have jurisdiction to hear the claim for unfair dismissal. The respondent employed the claimant for 8 weeks in which time she was a camp leader and receptionist (this is not intended to be a comprehensive list of the roles she performed). She commenced on 30 May 2019 and performed her last shift on 29 July 2019. She also had the opportunity to use her graphic design skills in a separate project; no work was submitted to the respondent by the claimant on that project after 30 September 2019.
- 20. Claims of unfair dismissal brought in accordance with S94 ERA are subject to S108 of the same act and require a qualifying period of employment of not less than two years. Given the length of the claimant's employment was less than two years this part of the claimant's claim has no reasonable prospect of success. There are no circumstances in this case which would make a reconsideration of the decision to dismiss the unfair dismissal claim in the interests of justice.
- 21. Since the hearing proceeded in the claimant's absence, she did not have an opportunity to advance facts which might explain that the filing of her claim was within the statutory time limits. I find that it is in the interests of justice to afford the claimant the opportunity to do that.
- 22. The Claimant's application for reconsideration of the judgment made on 9 July 2021 succeeds in part for the reasons stated above under Rules 70 and 72 of the Employment Tribunals Rules 2013. The judgment promulgated to the parties on 2 August 2021 is varied.

Other Matters

- 23. The claimant has requested a copy of the hearing record and transcript on the assumption the hearing is recorded; it wasn't, nor .

Employment Judge Allen

Date: ...27 August 2021.....

Sent to the parties on:

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For the Tribunal Office