Case No: 2207313/20

EMPLOYMENT TRIBUNALS

Claimant	**and**	**Respondents**
Ms S Malik		Harrods Limited

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the decisions:

a) that the complaints in relation to the Claimant's wages were presented out of time,
b) that it was reasonably practicable to present the claim in time and the claim was not presented within a reasonable period thereafter in any event; and
c) not to permit the application to amend the claim to add complaints of "automatic" unfair dismissal, "ordinary" unfair dismissal, disability discrimination, detriment for whistleblowing and/or health and safety detriment,

the application to reconsider is refused under Rule 72(1) as there is no reasonable prospect of the decisions being varied or revoked.

REASONS

Introduction

1. This claim was the subject of a Preliminary Hearing (PH) on 23 June 2021. Both parties were represented at the PH. Judgment was reserved and the decision with reasons dated 1 August 2021 ("PH Judgment") was sent to the parties on 2 August 2021, dismissing the Claimant's claim and vacating the further PH that had been provisionally listed for 16 August 2021.

Application for reconsideration

2. On 12 August 2021, the Claimant submitted by email a "request for the claim to be reconsidered". She explained that she is now representing herself. I have taken this (and what she has said about her previous representatives) into account in my reconsideration of the conclusions reached previously. For reasons set out below, I did not consider it necessary to ask the Respondent for its response to the application, although the Claimant had very properly copied in its representative to her application, in accordance with the Rules.

3. Under separate cover on 19 August 2021, the Claimant forwarded a spreadsheet of her means. I had ordered this to be produced by 7 July and sent to the Tribunal, in case I was minded to make a deposit order (or more than one). It was sent on 7 July to the wrong Tribunal email address and with the wrong case number in the subject line and hence I did not receive it by the time I completed the PH Judgment. Nonetheless, the Claimant was not at all disadvantaged by this, as I did not, in the event, decide to make a deposit order.

4. The background to the complaints was set out in considerable detail in the PH Judgment and I shall not repeat them in detail here. Although it is not expressly stated in the Claimant's application for reconsideration, I have assumed that save in relation to the dismissal on withdrawal, she is applying for each of the remaining elements of my conclusions to be reconsidered, so that the salient part of the decisions for these purposes is to be found at paragraph 38 of that Judgment.

Rules

5. The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

70. Principles

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.

71. Application

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.

72. Process

(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.

6. My task is to consider whether reconsideration of my decision is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

7. This reconsideration application was accordingly considered by me on the papers at the initial stage. The application repeats much of the information contained in the 90-page bundle submitted to the Tribunal before the PH (with supplemental pages added on the morning of the PH) and seeks to re-argue that which I have already considered and decided. The application provides no clear reason as to why the Claimant believes that it would be in the interests of justice to reconsider my decision.

8. The Claimant is unhappy with her solicitor's performance, and specifically what she says was a lack of communication between them on the day of the PH while the solicitor was conducting advocacy on her behalf. This is a matter that she may take up more generally with the solicitor's firm, but I make these observations: at the PH, the Tribunal was dealing with the case as it had been re-framed in advance of that hearing and by that solicitor, presumably on her client's instructions. The Claimant had originally put in her own claim including a number of complaints that the Tribunal did not have jurisdiction to hear. Any representative is rightly constrained to work within the statutory framework as applied to the factual background given to them by their client. It is still not entirely clear how the Claimant puts her claims so that they might be capable of being heard by an Employment Tribunal.

9. At the PH, the Claimant did not rely on evidence that the "detriments" she claims to have suffered (and that she says she continues to suffer) were because she had made protected disclosures and/or raised matters of health and safety. I noted at paragraph 25b of the PH Judgment that the way in which the proposed amendment in this regard was put was confusing; the reconsideration application has done little to remedy the

confusion. In fact, the Claimant says: "The judgement states that I claim that the allegations of the disciplinary and the disciplinary process itself were instigated as I had made claims regarding whistleblowing due to the lack of relevant health and safety issues and also due to disability. This is not the case, I did indeed make a mistake and expected to go through the disciplinary process…." That was nonetheless the way that the amendment application had been put: i.e. that the Claimant was subject to detriments for making protected disclosures and/or that she was treated unfavourably because of something arising in consequence of a disability.

10. What the Claimant appears now to be saying, which is different again from the way in which she sought to amend the claim at the PH, is that the disciplinary proceedings and sanction were **not** undertaken/imposed either because of any protected disclosures that she may have made or because of something arising in consequence of her disability but rather because she had made an error. This underlines, rather than causes me to rethink, that it would have been pointless to have allowed the amendment application, because that is not really how the Claimant wishes to put her case.

11. Further, as I found in the PH Judgment, the Claimant expressly agreed to the change in her role and pay by email of 17 March 2020. I accept that she went on to say in the same email that this acceptance was subject to the outcome of her appeal, and I also accept that that appeal was in part successful (in that her sanction was reduced in September 2020 from a final written warning to a written warning).

12. It was open to the Claimant to engage in discussions with the Respondent as to a possible return to her former position once the appeal was concluded, and it appears she did so. Indeed, I gather from the documents postdating the submission of the claim form but quoted in the reconsideration application that she raised this issue as a grievance but that, finding that the Claimant was not "completely absolved of liability", in December 2020 the Respondent declined to restore her to the role of High Cash Value Associate. The Claimant has not sought even in her reconsideration application to suggest that the grievance outcome was even partly influenced by whistleblowing or the raising of health and safety issues, or because of something arising in consequence of any disability.

13. It appears to me that the Claimant has been and is distressed by what she perceives to be a historic breach of the duty of care towards her and her colleagues in the HVCT. This does not, however, give her a claim of whistleblowing detriment. The detriments of which she complains are the treatment in HVCT itself and the refusal of the Respondent to reinstate her to high value duties and her previous salary following the disciplinary appeal. The alleged detriments while she was working in HVCT were not done to her by the Respondent because she complained about the working conditions or any safety aspect connected to that work. They appear to be allegations of aggression and even outright physical violence by customers which the Claimant says the Respondent overlooked or did not address adequately.

14. It is clear that the Claimant has been and is distressed by the outcome of the disciplinary proceedings, albeit she acknowledges she made a mistake in completing paperwork and anticipated disciplinary action being taken against her as a result. She has not however shown a causal link between that disciplinary action, with its eventual sanction after a partially successful appeal of a written warning, and any protected disclosures that she might have made previously. Just because the warning and role change took place after she raised concerns does not mean they took place **because** of those concerns being raised, and in fact the Claimant appears to confirm that it is not her case that they did. Nor is it now being suggested by the Claimant that they took place because of something arising in consequence of a disability.

15. Further, as is set out in the PH Judgment, the change to the Claimant's role and accompanying salary reduction occurred only with the Claimant's express consent on 17 March 2020. She had been offered a different role with the Respondent, in Safe Deposits (or more than one) where her salary would have been maintained at the same level. She did not explain and has still not explained why she rejected the role in Safe Deposits. This in any case is not particularly significant to my decision, because my finding was that her acceptance of the offer means that a) there can be no claim for breach of contract and hence no claim for unfair dismissal in those circumstances and b) consequently, there can be no claim for an ongoing series of deductions starting in April 2020 because the deductions made were expressly authorised when the Claimant accepted a new role in Transaction Services, with no high value dealings and at a lower salary. The whole email on which she relies was set out in the PH Judgment at paragraph 26e and I took it into account in that decision.

16. In the circumstances, there is nothing in what is now said by the Claimant which indicates that it is in the interests of justice to re-open matters and I do not need to seek the Respondent's comments on her application. I refuse it as there is no reasonable prospect of the decision being varied or revoked. I do not criticise the Claimant for the way in which she puts her claims nor for what I believe are very real concerns on her part, but nor can I allow a claim to proceed when there is no complaint within it that an Employment Tribunal might have jurisdiction to hear.

Employment Judge Norris
Date: 1 October 2021
JUDGMENT SENT TO THE PARTIES ON

04/10/2021

FOR THE TRIBUNAL OFFICE