



EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Ms M Keswani

Respondent: BBC

JUDGMENT

The Claimant's application by email dated 5/10/21 for a reconsideration of the Judgment (striking out 4 discrete aspects of the claims) on 22/9/21 is refused under Rule 72.

REASONS

1. Previously I instructed a tribunal clerk to inform the parties that the application would be refused, with the intention of issuing a formal judgment to this effect when I had the opportunity to do so. This message was passed on by a clerk to the parties on 14/10/21. I took this step because of the imminence of the trial and so that the parties (who are engaged in trial preparation) would have prompt notification of the fact that the strike-out would not be reversed. This document is the formal judgment refusing the review application and giving reasons for my refusal.

Time spent on the hearing:

2. I had other cases (as well as the instant matter) to deal with on 22/9/21. The instant matter required me to deal with a lengthy, multi-faceted but poorly-formulated specific-disclosure application by the Claimant, as well as the Respondent's strike-out/deposit application, and to decide on and issue appropriate case-management directions to ensure that a 14-day trial starting on 2 November 2021 was not de-railed.
3. I was unable to allocate more time than I did to the instant matter on 22/9/21 nor, given the imminence of the trial, was it feasible to adjourn the hearing on 22/9/21 to another date when more time might be available.
4. I had received and read the detailed skeleton arguments before the hearing.
5. In these circumstances I made what I regard as a proportionate and reasonable decision to place time limits on supplementary oral submissions so as to ensure that all necessary matters were dealt with on 22/9/21.
6. I allowed one hour to the Claimant's Counsel to make supplementary oral submissions in addition to time for reply. While this did place some constraint on the Claimants Counsel, and required her to increase the speed of her slow and somewhat unfocused oral submissions, each side had an equal, adequate and proportionate opportunity.
7. It was clear to me that extra time would serve no useful purpose. The Respondent's skeleton argument made limited discrete submissions for strike out which the Claimants Counsel failed to engage with cogently or at all.

References to case-law

8. While I did not separately set out the trite law pertaining to strike-out of discrimination claims, I had been referred to this and had read the skeleton arguments in which this was discussed. I expressly adopted and included by reference into my reasons the Respondent's skeleton argument which included, for example, at paragraphs 8 and 9, citations from the leading cases of Mechkarov v Citibank 2016 ICR 1121 and Ahir v British Airways PLC 2017 EWCA Civ 1392, in which the correct test is set out.

Correctness of the strike-out judgment

9. Having read the Claimant's application for re-consideration, I remain convinced that my decision to strike-out was correct for the reasons put forward by the Respondent (which I reproduced wholesale in my reasons for the strike out - as I could not improve on them and saw no reason to spend time reformulating the same points in different words).

Claimant's application for another hearing in support of her application for reconsideration.

10. There is no time for any such further hearing without imperilling the trial and it would not be in the interests of justice to hold such a hearing. In any event I have no doubt that the outcome would be the same.
11. I consider that there is no reasonable prospect of the strike-out judgment being varied or revoked.

J S Burns Employment Judge
London Central
21/10/2021
For Secretary of the Tribunals
Date sent to parties : 22/10/2021
