



EMPLOYMENT TRIBUNALS

Claimant: Mr D. Martin

Respondent Wm Morrison Supermarkets Plc

JUDGMENT ON A RECONSIDERATION

The Claimant's application dated 10 September 2021 for reconsideration of the Judgment sent to the parties on 18 August 2021 following the hearing on the 7 and 8 June 2021, is refused.

REASONS

I have considered the Claimant's application for Reconsideration. The letter of the 10 September 2021 was accepted as a letter seeking a re-consideration of the findings set out in the 17 August 2021 Judgment, sent to the parties on 18 August 2021. That application is refused on the basis that there are no reasonable prospects of that Judgment being varied or revoked.

Rules of Procedure

1. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.
2. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The application

3. In the Reserved Judgment of the 17 August 2021, it was determined that;
 - I. The amendment application to add a claim of breach of an equality clause pursuant to section 127 (1) Equality Act 2010 is refused.
 - II. The claim of sex discrimination under the Equality Act 2010 is struck out on the grounds it has no reasonable prospect of success under Rule 37
 - III. The claim of disability discrimination is struck out under rule 37 and the application to amend to include new claims is refused.
 - IV. The amendment to the claims under sections 47B, 100, 103A and 94 and 98 Employment Rights Act 1996 are permitted.
 - V. The application to amend the claim brought under section 146 (detriment on the grounds related to union membership or activities under section 46 of the Trade Union and Labour Relations (Consolidation) Act 1992) is refused and the claim is struck out under rule 37.
 - VI. The application to include a claim for unlawful deductions of wages/ breach of contract for the failure to pay the claimant's wages on 11 May 2018 is refused.
 - VII. The amendment to the claims for breach of contract/unlawful deduction from wages in relation to the wages and expenses payable in connection with the appeal and grievance hearings, performance related pay and overtime payments, are permitted.
 - VIII. Deposit orders were made as follows;
 - a) He was subject, pursuant to section 47B Employment Rights Act 1996, to the detriment of being made to carry out extra hours and carry out extra work and was 'treated differently' because he made protected disclosures, has little reasonable prospect of success. The claimant is ORDERED to pay a deposit of £200 not later than 14 days from the date this Order is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

- b) He was dismissed for a reason pursuant to section 153 and 152 of the Trade Union and Labour Relations (Consolidation) Act 1992 Employment Rights Act 1996, has little reasonable prospect of success. The claimant is ORDERED to pay a deposit of £200 not later than 14 days from the date this Order is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.
4. All the remaining claims were allowed to proceed to a final hearing and were confirmed to be;
- I. Ordinary unfair dismissal: sections 94 and 98 ERA
 - II. Automatic unfair dismissal for health and safety reasons: section 100 ERA
 - III. Automatic unfair dismissal for having made a protected disclosure: section 103A ERA
 - IV. Detriment for having made a protected disclosure: section 47B ERA (*Deposit order made in respect of allegation that the claimant was made to carry out extra hours and carry out extra work and was 'treated differently' because he made protected disclosures.*)
 - V. Dismissal for trade union membership/activities: section 153 and 152 of the Trade Union and Labour Relations (Consolidation) Act 1992 (*Subject to the Deposit Order*)
 - VI. Unlawful deductions/breach of contract: (*The application to include a claim for unlawful deductions of wages/ breach of contract for the failure to pay the claimant's wages on 11 May 2018 was refused*)
5. Despite the lengthy and detailed points raised in his application of the 10 September, attaching a copy of the Judgment with his comments and his subsequent letter of the 17 September 2021, there is no reasonable prospect of the Claimant establishing that the Tribunal made an error of law, or that any of the conclusions on the facts were perverse. Such contentions are in any event better addressed in an appeal than by way of reconsideration.
6. Further, the Claimant complains that; '*a lot of information and expectations of the claimant were crammed into 2 days - this is not enough time and not fair on the claimant and what was requested of him at the PH*'. I am satisfied that I took the time to go through in detail each type of claim with

the Claimant, what was required to establish the claims, recorded the further information he had provided and gave him time to consider and provide further details. The list of issues was prepared to capture what had been discussed on the first day and to enable the Claimant to see in 'black and white' how the information fitted into the issues and what information had still not been provided. We spent the entire first day of the hearing going through the claims and he was given further time on the second day to provide further details. Further, I recall and my notes confirm that at 4.20pm on the second day of the hearing, after all the evidence and applications had been made and the Claimant was making his final submissions, the Claimant confirmed that he was content with how the hearing had been conducted. My notes recall the Claimant stating; "*I am happy with what is going on – decision needs to be made.*" The Claimant was keen at that hearing, to have some finality and know which claims would be proceeding and which would not.

Conclusion

7. Whilst I appreciate that the Claimant is disappointed that not all of his claims are proceeding to a final hearing, with respect to the striking out of some of his claims; he should perhaps consider that it would otherwise involve him spending considerable preparation time and tribunal hearing time on claims with no reasonable prospects of success, rather than concentrating his efforts on those claims which appear to have reasonable prospects of success.
8. Having considered all the points made by the Claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Broughton

Date 8 November 2021

JUDGMENT SENT TO THE PARTIES ON:

9 November 2021

FOR THE TRIBUNAL OFFICE