



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Ziembinska

v

Daughters of Divine Charity

JUDGMENT ON RECONSIDERATION

1. The Judgment of the Employment Tribunal is that there is no reasonable prospect of the judgment of 24 August 2021 (sent to the parties on 21 September 2021) being varied or revoked. The claimant's reconsideration application dated 4 October 2021 is refused.

REASONS

2. 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. "For many years my employment wasn't recorded according to the basics of UK Government employment rules and regulations. I would like to appeal to employment rights for religious members as well which were not recorded according to the UK employment states."
 - b. "Your decisions make me becoming homeless very soon as I don't have any savings from previous years and have to survive without any support of Daughters of Divine Charity who does not do any Charity for their own members and recently few of them left the Congregation."
3. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.

4. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties. In this instance the application for reconsideration was only sent to the court and not to the respondent.
5. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. 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, so far as possible, be finality of litigation.
6. 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.
7. The procedure upon a reconsideration 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. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
8. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
9. In this case, I issued a judgment on 24 August 2021 ('the judgment'). I struck out the claimant's claim upon the basis that the claim was filed 13 months after the relevant date.
10. The reconsideration application as made within the prescribed time limit the judgment having been sent to the claimant on 21 September 2021. The reconsideration application applies to the whole judgment and does not recognise that the only reason for dismissal was that the claim was out of time and there were no grounds on which I could justify extending the statutory time limits for bringing a claim in this instance.

Interests of Justice

11. Judgments can be reconsidered by a Tribunal on its own initiative or on the application of a party where it is necessary in the interests of justice to do so. The phrase “interests of justice” is not defined in the new rules but is likely to include instances where:
- i. The judgment was wrongly made as a result of an administrative error.
 - ii. A party did not receive notice of the proceedings which led to the judgment.
 - iii. The judgment was made in the absence of a party.
 - iv. New evidence has come to light since the conclusion of the hearing (as long as its existence could not have been reasonably known or expected at the time of the hearing).

The tribunal will not agree to reconsider the judgment just because a party disagrees with it. There must be valid reasons for a reconsideration. A Judge has power to refuse an application for a reconsideration if they think it has no reasonable prospect of success.

12. The arguments raised by the claimant in support of her application for a reconsideration and set out at paragraphs a) and b) at the beginning of this Judgment are not relevant to the statutory time limits issue. No new evidence has come to light since the conclusion of the hearing as required under 9. iv. above.
13. The judgment specifically addressed the issue of statutory time limits in the dismissal of the claim. The relevant date asserted by the claimant (and unchallenged by the respondent) was 31 August 2019 however the ET1 claim form was filed on 28 September 2020.

“Section 164 Employment Rights Act 1996 (ERA)

(1) An employee does not have any rights to a redundancy payment unless, before the end of the period of **six months** beginning with the relevant date -

(d) a complaint relating to his dismissal has been presented by the employee under section 111.

Section 111 ERA

(2) [subject to the following provisions of this section], an [Employment Tribunal] **shall not** consider a complaint under this section unless it is presented to the tribunal-

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied but it was not reasonably practicable for the complaint to be presented before all the end of that period of three months.”

- 14. I am able to deal with the application without the respondent’s input, notwithstanding the claimant has not notified the respondent of this application. There is sufficient to dispose of the reconsideration application. There is no reasonable prospect of the judgment being varied or revoked.

- 15. It is not in the interests of justice to reconsider the judgment in the circumstances. To allow the claimant a second opportunity would be unjust to the respondent and would infringe the principle that it is in the public interest that there should be finality in litigation.

- 16. In the circumstances, the reconsideration application is refused.

Employment Judge Allen

8 November 2021

Date:

1 Decembr 2021

Sent to the parties on:

.....

For the Tribunal Office