Case No: 2304821/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs D Mankai

Respondent: (1) Intercash (Croydon) Ltd
(2) Peter Stent

JUDGMENT

The claimant's application dated 20 November 2021 for reconsideration of the judgment 2 November 2021 is refused.

REASONS

1. As per Rule 72(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, the application is refused because there is no reasonable prospect of the original decision being varied or revoked.

2. This is because the claimant's application for reconsideration discloses no new evidence or argument that was not considered at the Tribunal hearing on 9, 10, 11 and 12 August and on 14 and 15 October 2021.

3. The issues and evidence that the claimant asks the Tribunal to take into account in her reconsideration application were considered by the Tribunal prior to reaching its decision, which was given to the parties as a reserved decision dated 2 November 2021.

4. The reconsideration request states that there are four grounds for reconsideration:
    a. That the Tribunal made an error in finding that the claimant's discrimination claims were out of time and that it was not just and equitable to extend time;
    b. That the Tribunal "*did not take into consideration numerous facts that were available to the Tribunal at the final hearing*";
    c. "*The Tribunal did not fully understand the facts presented to them in evidence";* and

d. *"The Tribunal failed to consider all the facts available to them at the Final Hearing*"

5. In relation to the last three points of the reconsideration request, it is noted that of the 92 paragraphs of the reconsideration request, a number of these paragraphs are phrased thus: "*The Tribunal failed to consider*…" or "*The Tribunal did not consider*…". For example, paragraphs 42 to 89 inclusive are phrased in this manner. However in relation to each of these alleged failures, the Tribunal did consider the evidence put forward by the claimant. Some of it was not relevant to the issues that the Tribunal had to decide and so was not referred to in the judgment and reasons. The parties were reminded that this would be the case in paragraph 27 of the reserved judgment, which states

   "The evidence and submissions put forward by the parties has been considered by the Tribunal in this judgment. If the following findings of fact are silent in relation to some of that evidence and those submissions, it is not that it has not been considered by the Tribunal, but that it was insufficiently relevant to the issues that the Tribunal had to decide."

6. In relation to other alleged failures by the Tribunal to consider the facts put forward by the claimant, it is not the case that where the Tribunal reached a different conclusion on the facts from those put forward by the claimant, that this represents a failure by the Tribunal to consider the evidence. The Tribunal considered the claimant's evidence but on a number of issues (as set out in the judgment) preferred the respondents' evidence on the balance of probabilities. The Tribunal also considered the claimant's legal submissions in full, but where we did not make findings in favour of her this was because we preferred the respondents' submissions on those issues, not because of a failure on our part to consider her case.

7. A number of specific requests for reconsideration merit an individual response, as follows. We found that the claimant's discrimination claims were presented out of time and that they were not brought within such further time as was just and equitable so as to extend time for their presentation. We were therefore not able to consider her discrimination claims further. This was not a failure on our part in that regard, but that we found we had no jurisdiction to consider them.

8. Secondly, the claimant alleges that the Tribunal has made an error as to her effective date of termination and refers to time limits set out in paragraph 132 of the judgment. However, there is no error as to the EDT, which is set out in paragraph 31 of the judgment. Paragraph 132 does not refer to our findings on the EDT but refers to the respondents' submissions about time limits for the presentation of discrimination claims. The Tribunal did not accept the claimant's submission that discrimination continued until her EDT, and therefore the EDT is not relevant to when the limitation period for issuing discrimination proceedings started, on the Tribunal's findings.

9. Finally, paragraph 90 of the reconsideration request alleges that the Tribunal has found in error that the claimant accepted the respondents' changes to her working hours because she did not raise this with the respondents past 2005. The claimant highlights paragraphs in her witness

statement where her evidence was that, after 2005, she questioned her hours with the respondents.

10. Her witness statement was read in full by the Tribunal during the hearing and carefully considered. We found that the claimant did not have a contractual right to insist on a nine hour working day. We found that the respondents instead had the right, as expressed in the claimant's contract and as done in practice, to require her to follow management instructions to work varying hours to meet the needs of the business, subject to her receiving an average of 36 hours a week.

11. We accepted Mr Stent's evidence that he was never aware during the claimant's employment that she considered herself to have been subjected to a breach of her terms of employment regarding working hours. We accepted that he did not believe that she was entitled to insist on a 9 hour working day under the terms of her contract and had not understood that this was the basis of any complaint by her when she worked for him. His evidence was that she had queried the recording of her hours with him.

12. The claimant told the Tribunal that in 2005 she had a specific conversation with Mr Clay and a response from Mr Stent as to the reduction in hours from 9 to 8.75 per day, which evidence we accepted. Thereafter, her witness statement records that she "queried" or "questioned" her hours with Mr Clay or Mr Stent on a few occasions. The claimant alleges that the Tribunal has erred in failing to accept that this is evidence that she did not acquiesce in a breach of contract after 2005.

13. We did not accept that she specifically addressed the reduction from 9 hours to 8.75 hours after 2005. There was a notable lack of evidence of her having asserted to the respondent that a change in working hours was a breach of her contract, or even complaining about her working hours. This was particularly notable given how much evidence there was that she formally requested in writing that the respondents make other changes to her pay and job title, all of which were before us as letters in the bundle.

14. In any event, we found that the claimant set her own working hours after appointment to the role of branch manager in 2009 and that throughout her employment regularly worked hours less than or greater than 8.75 or 9 hours per day, whether due to overtime, shorter Sunday opening hours or due to seasonal changes in the nature of the business and that this was done with her consent. She was unable to identify when she earned less than 36 hours per week when asked.

15. Even if we were to amend our findings of fact to accept that the claimant directly and explicitly queried her daily hours with the respondents on her appointment to branch manager at Canterbury in 2009, this would not vary or revoke the decision that the claimant's claims for unlawful deductions from wages and breach of contract do not succeed. She did not establish on the balance of probabilities that she had a contractual right to insist on working 9 hours per day or that she suffered a loss of wages as a result.

Employment Judge Barker

Date: 25 November 2021