



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Clancy

v

Poolside Manor Limited

JUDGMENT

1. The Judgment of the Employment Tribunal is that there is no reasonable prospect of the judgment sent to the parties on 26 October 2021 being varied or revoked. The claimant's reconsideration application dated 5 November 2021 is dismissed.
2. The claimant's amendment application can be raised at the next hearing on 13 December 2021 if her current breach of contract claim is insufficient to properly reflect her claim.
3. The claimant has requested written reasons of the Reconsideration Judgment sent to the Parties on 26 October 2021. That judgment contained written reasons and no further written reasons will be provided. The right to request written reasons is to be found at Rule 62(3) of the Employment Tribunals (Constitution and Rules of Procedure) and applies to oral judgments which the reconsideration judgment was not.

Reasons

4. 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.

5. 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.
6. 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.
7. 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. The obligation includes:
 - Ensuring that the parties are on an equal footing.
 - Dealing with cases in ways which are proportionate to the complexity and importance of the issues.
 - Avoiding unnecessary formality and seeking flexibility in the proceedings.
 - Avoiding delay, so far as compatible with proper consideration of the issues.
 - Saving expense.
8. 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.
9. 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.

10. In this case, I issued a judgment on 9 July 2021. I struck out the claimant's claim upon the basis that the claimant had failed to rejoin the hearing after a 10-minute adjournment and all attempts to contact her by telephone and email had proved unsuccessful. The hearing proceeded in the absence of the claimant upon the application of the respondent.
11. The claimant subsequently asserted she had experienced technical difficulties in rejoining the hearing and since her phone was on silent had been unaware the tribunal had tried to telephone or email her.
12. Given that she had not been present when her case was struck out her application to reconsider the judgment of 9 July 2021 was granted in part.
13. Her claim for unfair dismissal was dismissed in accordance with Rule 27 on the grounds she had been employed by the respondent for less than 2 years. However, her claims under:
 - a. Failing to provide written statements of employment particulars
 - b. Unauthorised deductions of wages, and
 - c. Breach of contractWere set down for a preliminary hearing to determine if they had been filed out of time. The original purpose of the hearing on 9 July 2021.
14. The claimant filed her claim with the tribunal on 19 March 2020. On 21 September 2020 the claimant wrote to the tribunal seeking to amend her original claim from unfair dismissal to wrongful dismissal.
15. In her 5 November 2021 application for reconsideration of the judgment on reconsideration sent to the parties on 26 October the claimant asserts that a letter she sent to the respondent and tribunal on 21 September 2020 amended her claim from unfair dismissal to wrongful dismissal.
16. The claimant is mistaken. Amending her claim from unfair to wrongful dismissal is not a simple matter of amending of a typing error. Whilst the two types of claim often go hand in hand they are in fact completely different claims in law. The Employment Tribunal is a creature of statute and its jurisdiction to hear such

matters is limited to those which are brought within the statutory time limits or such time as the tribunal considers reasonable.

17. The amendment the claimant seeks to make is a new claim brought outside the statutory time limits, given that she last performed work for the respondent in 2019. In such circumstances the respondent is entitled to be heard on whether such an amendment should be permitted.

18. Time limits for bringing claims in the tribunal for breach of contract can be found in Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order SI 1994 1994/1623. For wrongful dismissal [which is a breach of contract claim] the time limit is 3 months starting with the effective date of termination (EDT) or if no EDT the last day on which the employee worked.

19. There is no reasonable prospect of the original decision being varied or revoked because the claimant's letter of 21 September 2020 was insufficient to amend her claim.

20. In answer to the claimant's question why the tribunal dismissed a claim that was no longer on the record the claimant is referred to paragraph 18 of the judgment sent to the parties on 26 October 2021 which deals with why the claim for unfair dismissal contrary to S94 of the Employment Rights Act 1996 and which remained on the court record on 9 July 2021, was dismissed.

Employment Judge Allen

Date: 7 December 2021

Sent to the parties on:

8 December 2021

For the Tribunal Office