



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Adolfi

Respondents: (1) Boleyn Road Practice (a partnership)
(2) Mr M Rafiq
(3) Dr S Rafiq

Before: Employment Judge O'Brien

JUDGMENT

The respondents' application dated 18 October 2021 for reconsideration of the judgment sent to the parties on 16 July 2021 (written reasons having subsequently been sent on 5 October 2021) is refused.

REASONS

1 By email sent at 18:39 on 18 October 2021, the second respondent requested reconsideration of a judgment sent to the parties on 16 July 2021.

2 The application was submitted in time. Whilst it does not appear to have been copied to the claimant as required by rule 71 of the Employment Tribunal Rules of Procedure 2013, I am able to determine the application without the claimant's comments, and so waive the requirement. Instead, I direct that a copy of the application be served on the parties with this judgment.

3 The respondents' application can be summarised thus. The written reasons for my judgment sent to the parties on 16 July 2021 were sent to the parties too late for the respondent to avoid having to pay the judgment debt (the claimant having apparently misled the debt collectors as to whether reasons for the judgment had been provided). TUPE applied to the claimant's employment, such that she was not dismissed by the respondents. The claimant had misled the Tribunal at the hearing in a number of material ways, relevant to her credibility in general and her quantum of loss in particular.

Relevant Rules on Reconsideration

4 The Employment Tribunals Rules of Procedure 2013 provide as follows:

71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 Process

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Analysis

5 For a number of reasons, which I need not go into, I was unable to prepare the written reasons or subsequently deal with this reconsideration application as quickly as I would have liked. I sincerely apologise for the inconvenience and distress caused to the parties by the delay. I was unaware at the time of the respondents' concerns about enforcement of the award pending receipt of my written reasons, and do not believe that any application had been made for me to stay execution of my judgment pending the provision of written reasons. Certainly, I was not aware of any. Clearly, I cannot comment on allegations that the claimant misled any debt collectors. In any event, the reasons provided were completely consistent with the decision I handed down orally to the parties, and so this is not a matter which raises reasonable prospects of the judgment being revoked or varied.

6 The respondents' argument that TUPE applied to the claimant's employment was alluded to at the hearing. However, the respondents' problem was first that they disavowed their original response, in which TUPE was raised, when they were asked to (and refused to) provide the contact details for the alleged transferee (and for other proposed additional respondents). Second, the respondents provided no evidence of the alleged TUPE transfer. I was entitled to and did decline to entertain any such unpleaded and/or unsubstantiated assertion by the respondents. To the extent that I should have dealt in any greater detail with the TUPE argument in my reasons, I would

have found that the respondents had not established that defence on the balance of probabilities. Consequently, this ground of reconsideration has no merit.

7 The respondents rehearse points made in the hearing about the claimant's credibility. However, the matters in question were entirely immaterial to the issues and not in fact significantly damaging to the claimant's credibility, to the extent that much turned in any event on her credibility rather than the uncontested facts. As for the respondents' evidence of the claimant being granted a reduction in hours, no explanation has been given for why this could not have been produced before or at the hearing and the claimant given a chance to comment on the evidence. Finality of litigation is in the interests of justice. Reconsideration is not an opportunity for a party to retry a case having used the first hearing to identify the weaknesses in its own presentation. Again, these points are unmeritorious.

8 In summary, the points made by the respondents in their application seek to reargue the appeal and disclose nothing in any event which could materially undermine my decision. The application is therefore refused on the grounds that there are no reasonable prospects of the judgment being varied or revoked.

Employment Judge O'Brien
Dated: 16 December 2021