



EMPLOYMENT TRIBUNALS

Claimant: Miss N Mirabdolhagh Hezaveh

Respondent: Headmasters Salons Ltd

Heard via Cloud Video Platform (London Central) On: 8 February 2022

Before: Employment Judge Davidson

Representation

Claimant: Miss Iqbal, lay representative

Respondent: Ms C Gurevitz, HR Consultant

JUDGMENT FOLLOWING A RECONSIDERATION HEARING

Following the reconsideration hearing, the tribunal confirms its original decision to strike out the claimant's claim.

REASONS

Issues

1. The issues for today's hearing were as follows:
 - a. Does the tribunal have jurisdiction to hear the reconsideration application as it was made out of time?
 - b. If it does have jurisdiction, should the original decision be confirmed, varied or revoked?
2. This hearing was listed to consider the claimant's request for a reconsideration of my decision of 13 September 2021 to strike out her claim. The claimant did not attend and was not represented at that hearing, which is why I considered it in the interests of justice to hold a reconsideration hearing.
3. The respondent's representative contended that I did not have jurisdiction to entertain the reconsideration as it had been lodged out of time.

4. I took the view that I would give the claimant the opportunity to make representations on the strike out application and I would consider the time point and, if appropriate, the substantive points once I had heard from both parties.
5. Both Ms Gurevitz and Miss Iqbal made articulate representations before me and I appreciated their cooperation.

Time point

6. The strike out decision was sent to the parties on 15 September 2021 by email to the email address provided by the claimant. The reconsideration application was received on 26 October 2021, approximately 4 weeks out of time.
7. Miss Iqbal told the tribunal that she never received the email attaching the Judgment and only found out that the case had been struck out when she went to the CAB for advice on 26 October 2021. The CAB checked the online register of judgments and informed her that the case had been struck out at the hearing on 13 September 2021.
8. She then telephoned the tribunal and spoke to one of the staff, MP. He told her to send an email to the tribunal inbox, which she did, on 26 October 2021, setting out her position.
9. Miss Iqbal explained to me that she and the claimant had not attended the hearing on 13 September because they had not received the joining instructions. I checked the email address that they had been sent to and she confirmed that it was the correct email address. She said that there had been issues in the past with email, but it turned out the issue she was referring to was the tribunal sending documents relating to another case to this email address. The only examples of tribunal correspondence not reaching the claimant appear to be the joining instructions for the hearing on 13 September 2021 and the Judgment following that hearing on 15 September 2021.
10. The email Miss Iqbal sent on 13 September 2021 which was before me at the original hearing stated "*The claimant is highly stressed out apparently there was a PH today for 10am. Firstly, the claimant didn't receive any document from the tribunal to state about this hearing.*" I understood this to mean that the claimant had not been aware that there was a hearing that day. Miss Iqbal has clarified that she was referring to joining instructions by 'any document from the tribunal' and she accepted that they were aware that there was a strike out hearing listed for that day.
11. When asked why she had not taken steps to find out the outcome of the hearing, Miss Iqbal said that she had rung the tribunal on 15 and 16 September 2021 and spoken to staff who did not tell her the case had been struck out. She did not attempt to contact the respondent's representative.
12. There was a full merits hearing which had been due to start on 12 October 2021. When asked why she made no enquiries relating to that hearing, she said she spoke to a member of the tribunal staff on 8 October 2021. Miss Iqbal first said that they didn't understand why she was calling as it had been struck out but corrected herself and said that she was told the hearing would be going ahead on 12 October 2021.
13. She does not seem to have followed up with the tribunal or with the respondent's representative to see whether the hearing was going ahead and, if not, why not. She claims not to have been aware that the case was struck out. No other notification that the full merits hearing was not going ahead was sent. No bundle had been agreed or shared between the parties and there had only been partial exchange of witness statements.
14. It is hard to understand why a claimant, who has waited for the hearing of her complaint since 2019, would do nothing on the dates which had been fixed for a hearing when she

had heard nothing from the tribunal or the respondent.

15. I note that in the emails to the tribunal (one of which is 5 pages long) of 26, 27, 29 October and 4, 6, 20 and 26 November 2021, Miss Iqbal makes no reference to having spoken to tribunal staff on 15, 16 September or 8 October. On the contrary, she complained that she had called numerous times and there had been no answer. I therefore found it difficult to rely on her assertion that she had spoken to tribunal staff on those earlier occasions.
16. When asked why she had not emailed the tribunal (which is what she has done in the past and did on 26 October), she said she found it difficult to use email due to her vision impairment disability and, when she does send emails, she asks a friend to help. She said she was unable to find anyone to help her send an email between 15 September and 26 October 2021.
17. The respondent submitted that the tribunal rules of procedure provide that any reconsideration application must be made within 14 days of the decision. The respondent contends that the tribunal has no jurisdiction to consider the reconsideration application due to the 14 day time limit. However, I pointed out that it is open to me to invoke Rule 5 and extend the time limit and this would be something I would consider.

Original strike out decision

18. The background to the claim and the reasons for my decision are set out in the original decision. I gave the claimant an opportunity to make the representations she would have made if she had attended the hearing, although I had taken into account representations she had made in correspondence which were before me on that occasion.
19. The underlying issue, which led to the original strike out, was the claimant's failure to provide disclosure of the documents she was relying on or to exchange two of her three witness statements.
20. She has maintained that the documents were disclosed to the respondent's previous representatives. The respondent's current representative explained that the respondent's previous representatives had never passed on any documents to her client or to her. The person who was dealing with it moved on and nobody was able or willing to assist. Her position is that, without these documents, she cannot prepare for the hearing.
21. Despite her position that disclosure has taken place, Miss Iqbal has, on several occasions, promised to disclose the documents to Ms Gurevitz but has never done so. She confirmed that she had sent the original documents to the previous advisers by email and it was just a question of going to her outbox and forwarding those 'Sent emails' to the respondent's representative. The reasons she gave for not having done this are that it would take her a long time to read through them and ensure there was no duplication as she finds it hard to read on the computer due to her disability. Ms Gurevitz has offered to sort through the disclosure to put it into a bundle so there would be no need for Miss Iqbal to look through the attachments to the sent items. Presumably, if she was happy in sending them to the previous advisers, she should be happy to send them to the new advisers without re-checking.
22. In correspondence (email of 10 September 2021), Miss Iqbal said that 'all the documentation that has been listed in my index of documents has been provided to previous respondent's solicitors and current one' although she accepted at the hearing that there were documents that Ms Gurevitz had not seen.
23. I also took note that these requests have been going on since January 2021. The claimant and Miss Iqbal have both had health and other personal issues, including various bereavements and other family problems, which have had a significant impact on their ability to deal with this, for which I am sympathetic and I have taken these matters into

account. However, I consider that the orders could have been complied with at some time since January 2021. In that time, Miss Iqbal has made eloquent submissions by email and, to the extent she has had help with these, she could have asked to help in forwarding the sent items to the respondent's new representatives, which is a relatively simple task for somebody familiar with using email.

24. The lack of compliance with orders also relates to the failure to exchange witness statements. The claimant states she has two witnesses other than herself. One witness statement (of Frederick) has been sent to the respondent. The respondent's representative states that she has not received the claimant's witness statement. Miss Iqbal said she had sent it but was unable to say when. In any event, she has not explained why she could not simply send it again. She accepted that the claimant's witness statement makes reference to documents which Ms Gurevitz has not seen although she states that they had been disclosed to the respondent's former advisers.
25. At all stages, the claimant and her representative have been reactive in progressing with the claim. It is the claimant's claim and it is surprising that she does not appear keen to pursue it by pushing for preparation to continue in order to be ready for the hearing date.
26. I also note that no medical evidence had been supplied until this hearing, despite two Employment Judges previously informing the claimant of the need to provide evidence of any medical issues to explain non-compliance with orders. The evidence provided partly relates to the period in question but does not, in my view, explain a failure to comply with the orders over such a long period.
27. Miss Iqbal accepts that she has not sent the third witness statement. She was initially reluctant to identify the witness but subsequently told the tribunal that the witness was Chloe. Chloe has had personal issues and has been abroad so they have not been able to finalise and serve her witness statement. This is now ready to be served.
28. The respondent's position is that a fair trial is no longer possible since the events being complained of took place prior to May 2019. In February 2022, there are still Whatsapp messages and other documents relied on by the claimant which the respondent has not seen. It would be difficult for the respondent to be able to defend the claim in these circumstances.

Determination of the Issues

29. I find that the reconsideration request was made outside the time limit set out in Rule 71. However, I must consider whether to exercise my discretion under Rule 5 to extend time.
30. Taking into account the claimant's knowledge that a strike out hearing was taking place on 13 September 2021, I find that it was not reasonable for her not to find out whether the hearing went ahead and, if so, the outcome of that hearing,
31. This is made more surprising by the listing of the full merits hearing from 12 October 2021, which the claimant was aware of. If she was unaware that the claim had been struck out, it is not credible that she made no enquiry of the arrangements for the hearing of that case, either with the tribunal or with the respondent. Miss Iqbal claims to have called the tribunal office on 8 October but this is not referred to in any emails and had not been mentioned prior to the reconsideration hearing.
32. Miss Iqbal has communicated with the tribunal and with Ms Gurevitz numerous times by email. Her explanation that she was unable to find anyone to help her in the period before 26 October 2021 is difficult to accept when the claimant herself (whose email address is being used for this correspondence) does not have vision problems and could have helped Miss Iqbal and when Miss Iqbal has managed to find a way to send numerous emails, many of them lengthy, at other times.

33. The claimant and her representative have not explained why, in the light of problems getting through to the tribunal administration, they did not contact the respondent's representative. If it was difficult to send emails, they could have contacted Ms Gurevitz by telephone.
34. Taking these factors into account, I do not consider it appropriate to extend the time limit set out in Rule 71. I therefore find that the tribunal does not have jurisdiction to hear the reconsideration application as it was lodged out of time.
35. If I am wrong about that, I go on to consider whether I would have changed my original decision if I had allowed the reconsideration request to proceed. Although the claimant and her representative have provided more information at this hearing than they have on previous occasions, the various significant problems they have both had to overcome do not explain the failure to engage in the process of preparation for the hearing of the claimant's claim.
36. It is not the case that the claimant and her representative have been entirely out of action over the period in question (from January 2021), as they have responded to correspondence on various occasions. Miss Iqbal has requested extensions of time at various times and then not complied with the new deadline or explained the non-compliance until chased. The input required to comply with the orders is relatively straightforward, comprising forwarding emails from the 'Sent Items' folder to Ms Gurevitz. Miss Iqbal has not provided an adequate explanation for the failure to do this.
37. I find that these delays have prejudiced the ability to have a fair trial.
38. I find no reason to revoke or vary my original decision.

Employment Judge Davidson

Date London Central 17 February 2022

JUDGMENT SENT TO THE PARTIES ON

18 Feb. 22

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVP video. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.