



EMPLOYMENT TRIBUNALS

Claimant: Miss K S Bradley

Respondent: Morrisons Gas Related Products

JUDGMENT

The claimant's reconsideration application is refused.

REASONS

The claim

1. By a claim form presented on 4 August 2021, the claimant raised a complaint of unfair dismissal. Section 1.8 of the claim form contained a series of tick-boxes for the claimant to indicate whether she preferred to be contacted by e-mail or by post. She ticked the box to express a preference to be contacted by e-mail and entered her e-mail address into the appropriate field. At Box 8.1, the claimant stated that she was not "particularly e-mail savvy" and complained that she had not received written warnings by post.
2. By letter dated 18 August 2021 the tribunal directed the parties to take a number of steps. One of these was for the claimant to provide the respondent with a document setting out her claim for compensation. Further case management directions required the parties to disclose documents and prepare witness statements. A final hearing was listed to take place in December 2021.
3. The tribunal's letter appears to have been sent to the parties by post.
4. In a letter e-mailed to the tribunal 7 October 2021, the respondent complained that the claimant had not provided a "schedule of loss". Whilst that phrase may have been hard for the claimant to understand by itself, the letter went on to explain clearly what the tribunal's 18 August 2021 letter had required the claimant to do. The letter sought an "unless order". If granted, the unless order would have required the claimant to provide a schedule of loss within 7 days or her claim would have been dismissed. The respondent's letter also sought a postponement of the final hearing on the ground of witness unavailability.

5. A copy of the respondent's letter was also e-mailed to the claimant at the same e-mail address as she had given in the claim form.
6. The respondent's letter was referred to Employment Judge Holmes, who decided not to make the requested "unless order". Instead, by letter dated 25 October 2021, EJ Holmes required the claimant to comment urgently on the alleged failure to provide a schedule of loss and on the proposal to postpone the final hearing. That letter was sent to the claimant by e-mail the same day, using the same e-mail address as before.

The strike-out warning

7. The claimant did not reply to the letter of 25 October 2021. The file was referred again to EJ Holmes, who decided to postpone the final hearing and issue a strike-out warning. Accordingly, on 9 November 2021, the tribunal e-mailed a letter to the claimant, informing her that the hearing had been postponed. Attached to the e-mail was a letter warning her that the tribunal was proposing to strike out her claim on the ground that it was not actively pursued. She was given an opportunity to make representations as to why that should not happen. The letter also required her to confirm whether all case management orders had been complied with to date and, if not, why not.
8. The claimant did not reply to that e-mail either.

The judgment

9. The file was next referred to me. I decided to strike out the claim. Although the failure to set out her claim for compensation would not have prevented a fair hearing, I was concerned that the claimant was not taking active steps to pursue her claim. She had repeatedly failed to answer correspondence from the respondent and the tribunal, despite having been given a clear warning of what was about to happen to her claim.
10. The judgment striking out her claim was sent to the parties on 15 December 2021. It was accompanied by brief written reasons. The method of delivery was once again by e-mail to the address that the claimant had given in the claim form.
11. As a separate attachment to the 15 December e-mail, the tribunal sent a letter explaining the judgment. The letter contained a table setting out various steps that the claimant could take in relation to the judgment. These steps included an application for reconsideration. The time limit for making such an application was included in the table in bold type.

Reconsideration application

12. The claimant e-mailed the tribunal on 11 March 2022, using the same e-mail address. Her e-mail acknowledged that she had received an e-mail stating that her claim had been struck out, but asserted that she had received that e-mail on 15 February 2022 from Ms Cocksedge, an ACAS conciliator. According to her e-mail, she had "agreed to the postponement" and had been "waiting to hear about a new date". Her letter repeated the reason why the respondent had applied for that postponement. She repeated that she was "not very good with e-mails". She asked why her claim had been struck out and asked the tribunal to "review the situation".
13. There was no indication in the e-mail that the claimant had actually done anything to prepare for the final hearing. She did not give any clue as to whether

or not she had complied with the case management orders for documents or witness statements. That, of course, was one of the things that the tribunal's 9 December 2021 letter had required her to do.

14. Attached to her e-mail was a link to a copy of the respondent's 7 October 2021 letter, stored on Google Drive.
15. When the claimant's e-mail was referred to me, I interpreted it as an application for reconsideration of my strike-out judgment.

Relevant law

16. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".
17. Rule 71 sets out the procedure for reconsideration applications. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date on which the written record of the decision was sent to the parties.
18. By rule 72(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... the application shall be refused..."
19. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.
20. Rule 5 gives the tribunal power to extend any time limit specified in the Rules, whether or not it has expired.

Conclusion

21. The first difficulty that the claimant has is that her reconsideration application was presented after the expiry of the 14-day deadline. The last day for presenting her application was 29 December 2021. Her application was approximately two and a half months too late.
22. I have evaluated the claimant's explanation for the delay in applying. She says that she was informed of the strike-out judgment on 15 February 2022. There is no reason to think that the tribunal's e-mail of 15 December 2021 did not reach her e-mail address. It was the correct address which she gave to the tribunal and subsequently used when applying for reconsideration. But even if the judgment somehow went astray, the claimant still took more than 14 days to e-mail the tribunal once she was informed of it by ACAS.
23. The claimant has consistently said that she has some difficulties with e-mails. But she also informed the tribunal that e-mail was her preferred method of communication.
24. The claimant's 14 March 2022 e-mail demonstrates a number of things:
 - 24.1. she must have read the tribunal's e-mail of 9 November 2021, otherwise she would not have known that the tribunal had postponed the final hearing;
 - 24.2. she must have downloaded the attachment to the respondent's 7 October 2021 e-mail in order to store it on Google Drive; and

- 24.3. she must not only have downloaded that attachment, but she must also have read it - that was the only way that she could have known that the respondent had applied for the postponement and the basis upon which the respondent had made that application.
25. In my view, the claimant was good enough at using e-mails to enable her to discover the judgment and to apply for reconsideration within the time limit.
26. There is likely to be a significant disadvantage to the respondent if I were to extend time for the claimant to make her reconsideration application. If I were to give the claimant the extension she needs, and ultimately to revoke the strike-out judgment, the parties would need to prepare for the final hearing almost from scratch. This exercise, and in particular the process of preparing witness statements, will be considerably harder now than if it had been done in the autumn of 2021. The events are less likely to be fresh in the witnesses' minds.
27. I am also concerned that, if the strike-out judgment were to be revoked, the claimant would still fail to take the active steps she would be required to take in order to get ready for the hearing. Even if some of her inactivity was caused by her difficulties in dealing with e-mails, that does not explain why she also failed to comply with a direction contained in a letter that was posted to her.
28. For the same reasons I also consider that there is no reasonable prospect of the judgment being varied or revoked.
29. The claim remains struck out.

Employment Judge Horne
16 March 2022

SENT TO THE PARTIES ON
29 March 2022

FOR THE TRIBUNAL OFFICE