



EMPLOYMENT TRIBUNALS

Claimant: Mr C Jenkins

Respondent: Compass Group Uk & Ireland Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION without a hearing

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked. It is not necessary in the interest of justice.

REASONS

1. The claimant applied for a reconsideration of the decision dated 1 March 2022 which was sent to the parties on 1 March 2022 (the decision). The grounds are set out in his letter dated 3 March 2022 and received at the tribunal office on the same day.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision was sent to the parties. The application was therefore received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

The Claimants application for a reconsideration of my decision not to strike out the Respondents response is refused.

There is no reasonable prospect of the decision not to strike out the respondent's defence being revoked varied or altered.

Reasons

1. In his original application for strike out of the respondent defence, the Claimant has set out in some detail the criticisms he makes of the Respondents case. He has made a number of assertions about factual matters. He has also made a number of assertions about the conclusions that should be drawn from the factual matters which he asserts and relies upon.
2. From the Respondents pleaded case and response to the application to strike out, I determined that there are significant factual matters in dispute.
3. In order to determine whether the Claimant is right or wrong about these matters it will be necessary to hear sworn evidence from the claimant; sworn evidence from the respondent and submissions on fact and law from both parties after which a tribunal will make findings of fact, apply the relevant law and reach a decision.
4. I reminded myself that once a claim (or an amended claim, as the case may be) has properly been identified, the power to strike it out under SI 2013/1237 Sch 1 r 37(1)(a) on the ground that it has no reasonable prospect of success will only be exercised in rare circumstances (see for example *Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly* [2012] CSIH 46, [2012] IRLR 755, at [30]).
5. I took particular account of the case of *Ezsias v North Glamorgan NHS Trust* [2007] EWCA Civ 330, [2007] IRLR 603, [2007] ICR 1126 . In that case, when considering the circumstances in which a Judge can exercise discretion to strike out a claim as having no reasonable prospect of success at a preliminary stage, Maurice kay LJ stated,

It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the employment tribunal to decide otherwise. In essence that is what Elias J held. I do not consider that he put an unwarranted gloss on the words 'no reasonable prospect of success'. It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute.

An example might be where the facts sought to be established by the applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. The present case does not approach that level.

6. Further I took into account the dicta of the EAT in Tayside Public Transport Co Ltd t/a Travel Dundee (appellant) v Reilly (respondent) 2012 IRLR 755 that

The power to strike out under rule 18(7)(b) may be exercised only in rare circumstances. In almost every case the decision in an unfair dismissal claim is fact-sensitive. Therefore, where the central facts are in dispute, a claim should be struck out only in the most exceptional circumstances. Where there is a serious dispute on the crucial facts, it is not for the tribunal to conduct an impromptu trial of the facts. There may be cases where it is instantly demonstrable that the central facts in the claim are untrue; for example, where the alleged facts are conclusively disproved by the evidence adduced. But in the normal case where there is a “crucial core of disputed facts”, it is an error of law for the tribunal to pre-empt the determination of a full hearing by striking out.

7. I therefore concluded, on the information before me, applying the relevant legal principles, and exercising my discretion under rule 37(1), that this is not a case in which a strikeout of the Respondent's response is appropriate. It is not possible on the information provided to say that there is no reasonable prospect of the respondent succeeding in defending the claim, because significant factual , matters remain in dispute.
8. I reiterate that in this case, the appropriate place for determination of the conflicts of fact is at the final hearing of this matter.
9. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the decision being varied or revoked.

Employment Judge Rayner
Dated: 18 March 2022

Judgment sent to parties: 1 April 2022

FOR THE TRIBUNAL OFFICE