THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr S Mitchison
Respondent: McDonald's Restaurants Ltd

JUDGMENT

The Judgment of the Employment Tribunal is that the claimant's application dated 15 April 2022 for reconsideration of the Judgment sent to the parties on 12 April 2022 is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

The context

1. I conducted a preliminary hearing in relation to this case on 8 April 2022. At the conclusion of that preliminary hearing I gave judgment orally, which was produced in writing and signed by me on 10 April 2020 and sent to the parties on 12 April 2022.

2. In essence, I found that the claimant's complaints of, first, wrongful dismissal and, secondly, failure on the part of the respondent to permit him to be accompanied at a disciplinary hearing were not presented to the Employment Tribunal within the respective primary time periods of three months, in each case it was reasonably practicable for the claimant to have presented his complaints within that time period and, therefore, the complaints not having been presented in time the Tribunal was precluded from considering either of them.

3. In an email dated 15 April 2022, the claimant requested a reconsideration of my decision.

The law

4. So far as is relevant to this application for reconsideration, rule 70 of the Employment Tribunals Rules of Procedure 2013 ("the Rules") provides as follows:

"*A 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 decision ("the original decision") may be confirmed, varied or revoked*."

5. Rule 71 (once more so far as is relevant) provides as follows:

"*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 …. of the original decision was sent to the parties …. and shall set out why reconsideration of the original decision is necessary.*"

6. In this case the claimant has complied with the above requirements. He has set out why reconsideration is necessary as follows:

"*The concerns I have relate to the Employment Tribunal's interpretative obligations under the UN Convention on Rights of People with Disabilities 2006 and specific guidance provided to the Employment Tribunal in the Equal Treatment Bench Book 2021 in respect of:*

- *Procedural accommodations*
- *Extensions to time limits*
- *Interpretation of relevant terms in legislation; namely, the term 'reasonably practicable'*
- *Treatment of participants in legal proceedings with mental and physical disabilities and litigants in person*"

7. As set out above, 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. Although there is that discretion, it must be exercised judicially. Amongst other things, 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 proceedings and having in mind the public interest principle that there should, so far as possible, be finality in litigation.

8. In dealing with the question of reconsideration I must seek to give effect to the overriding objective contained in rule 2 of the Rules to deal with cases fairly and justly.

9. The process to be followed following an application made under rule 71 is provided for in rule 72. Where practicable the consideration must be by the Employment Judge who made the original decision. The initial stage of the process is as follows:

> "*If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked …. , the application shall be refused and the Tribunal shall inform the parties of the refusal.*"

10. Essentially, therefore, 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 a party to apply simply because he or she disagrees with the decision. In exercising this function the role of the Employment Judge could be described as acting 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 subsequent reconsideration hearing, which may be convened in accordance with rule 72(2).

Interests of Justice

11. As set out above, judgments can be reconsidered where it is necessary in the interests of justice to do so. The phrase "interests of justice" is not defined in the Rules but, drawing on examples arising from rule 34 of the previous 2004 Tribunals Rules of Procedure, it is likely to include instances where the judgment was wrongly made as a result of an administrative error; a party did not receive notice of the proceedings; the judgment was made in the absence of a party; new evidence has come to light since the conclusion of the hearing, particularly if its existence could not have been reasonably known or expected at the time of the hearing.

12. That is not an exhaustive list, however, and I repeat that the guiding principle for me is to seek to deal with this application fairly and justly in accordance with the overriding objective contained in rule 2 of the Rules. I also repeat that the interests of justice applies to the interests of justice of both parties and that there is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation.

Consideration

13. As stated above, I announced my judgment and the reasons for it orally at the conclusion of the Hearing on 10 April 2022. The claimant applied for written reasons, which I produced and signed on 25 April 2022 and which I believe is to be promulgated today, 27 April 2022. In those reasons I set out in some detail the evidence of the claimant, the submissions of the parties, relevant statutory and case law and how I had applied the facts and the law so as to determine the issues that were before me.

14. Of particular note was the chronology agreed between the parties relating to the events that had given rise to the claimant's claims, being primarily the dates of

his dismissal, the disciplinary hearing at which he maintained the respondent failed to comply with its duty to allow him to be accompanied, early conciliation and the presentation of his claim form (ET1). Crucially, in the grounds of complaint the claimant attached to that claim he acknowledged, "this means I am submitting my claim late" and asked the Tribunal nevertheless to hear his claim, "in light of the exceptional circumstances that I genuinely and honestly misunderstood when the 3-month time limit for bringing a tribunal case against an employer began".

15. In light of the matters contained in the reasons for my Judgment including the above concession on the part of the claimant and his repeated answers in cross examination that he had identified in his researches that the three-month period commenced either with the date of the incident (i.e., in this case, the date of the disciplinary hearing) or the date of the dismissal, I determined that the claimant was not reasonably ignorant of the existence of the actual time limit and that it was reasonably practicable for the claimant to have presented his complaints in time.

16. In coming to that conclusion I had in mind the second factor relied upon by the claimant (which he said was inextricably linked to his misunderstanding of the time limit) that he suffers with Type I Diabetes and that the stress and anxiety of losing his job had a negative impact on his health including intellectual confusion and difficulty dealing with day-to-day tasks.

17. In my reasons, however, I identified that the claimant had certain difficulties in relation to that second factor. In summary, in his claim form the only reason he gave for the lateness of its presentation was "the exceptional circumstances" of misunderstanding when the 3-month time limit began with no mention whatsoever of issues arising from his health; throughout the time when he might have been presenting his claim he had appeared to engage effectively with the respondent's internal appeal process and with ACAS; he had not provided any evidence in support of his assertions of having suffered stress or anxiety or that those conditions had led to intellectual confusion and difficulties dealing with day-to-day matters. Indeed, the claimant confirmed in cross examination that he had not contacted his GP about such issues and there was nothing in the medical evidence that he did submit that supported his contentions in these respects. I do accept, on balance of probabilities, that the claimant did have Type I Diabetes at the relevant time but it was for the claimant to show, again on balance of probabilities, that the effect of that condition at the material time made it not reasonably practicable to present his claims in time (see: Chouafi v London United Busways Ltd [2006] EWCA Civ 689), which I am satisfied he failed to do.

18. This leads to the reasons relied upon by the claimant in his application as to why the reconsideration of my original decision is necessary, which are set out above.

19. I accept that in the reasons I gave for my original Judgment I did not refer to the UN Convention on Rights of People with Disabilities 2006 or the guidance contained in the Equal Treatment Benchbook. It is equally right that I did not refer, for example, to the right to a fair trial, contained in Article 6(1) of the European Convention on Human Rights, which is incorporated into UK law by The Human Rights Act 1998. The reason for that is that these and other Conventions, statutes and sources of advice always provide the context for and guidance in relation to relevant aspects of litigation before courts and tribunals. They can be described as being the backcloth or bedrock for the practices and procedures in litigation and for the decisions that are made. That being so, unless they are being particularly relied upon they rarely need to be expressly referred to but that does not mean that I did not have such matters in mind in coming to my decision including the specifics to which the claimant makes reference in the bullet points set out above.

20. In this connection it is of note that at no stage in these proceedings, including at the preliminary hearing I conducted on 8 April 2022, did the claimant refer to the UN Convention on Rights of People with Disabilities 2006 or the guidance contained in the Equal Treatment Benchbook, which matters that he now raises as the reasons why my original Judgment should be reconsidered. I make that point not by way of criticism of the claimant but because it supports the point that I have made above that it was not necessary for him to do so as these matters always provide the context for and guidance in respect of litigation.

21. More particularly, while I have accepted above that, on balance of probabilities, the claimant did have Type I Diabetes at the relevant time, he did not at the preliminary hearing on 8 April 2022 and still has not provided any direct personal evidence as to the effect of that condition on him or, indeed, that he is a disabled person as that term is defined in section 6 of the Equality Act 2010 or that the UN Convention on Rights of People with Disabilities 2006 or the guidance contained in the Equal Treatment Benchbook upon which he relies for the purposes of this application for reconsideration are applicable to him.

22. At the preliminary hearing on 8 April 2022 I had regard to what the claimant described as the inextricably linked factors of his misunderstanding of the three-month time and the consequences of his diabetes. For the purposes of this reconsideration I have again had regard to those factors but I remain satisfied that it was reasonably practicable for the claimant to have presented his claims in time.

23. For the above reasons, I am satisfied there is no realistic prospect of the original decision being varied or revoked. That being so, I am satisfied it is not in the interests of justice to reconsider my original Judgment. To do so would not be in the interests of justice and would infringe the principle that it is in the public interest that there should be finality in litigation.

24. In the circumstances, the claimant's application for reconsideration is refused.

EMPLOYMENT JUDGE MORRIS

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 27 April 2022

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