



EMPLOYMENT TRIBUNALS

DECISION ON A RECONSIDERATION APPLICATION

Claimant: Mr R Bird

Respondent: Raymond Bird IP Limited

Heard at: Midlands (East) Region on the papers

On: 25 May 2022

Before: Employment Judge Blackwell (sitting alone)

JUDGMENT

Decision pursuant to rule 72, paragraph 1 of the first schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

The Claimant's application is refused and the Original Decision stands.

REASONS

History

1. The Claimant's Claim Form was received by the Tribunal on 31 March 2021. No Response was received to the claim. Accordingly, a Judgment pursuant to Rule 21 of the above Rules was entered and sent to the parties on 15 June 2021. A Remedy Hearing was ordered and was held on 13 October 2021. The Respondent did not attend and was not represented. A Judgment was sent to the parties on 14 October 2021 (the Original Decision).
2. On 3 May 2022, the Claimant wrote to the Tribunal as follows:

"...

*Regarding the tribunals remedy judgement ... of case number 2600597/2021 the defendant has deceased trading but still considered solvent. High court enforcement officers were unsuccessful retrieving any funds. I have applied to the Redundancy Office; they have asked me to request that the judge vary the order from a basic (**unfair***

dismissal award) to a (redundancy award) so they can process my payment.

...

Relevant rules

“Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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. If it is revoked it may be taken again.

Application

71. 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.

Process

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 (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.”

3. As can be seen from the above chronology, the Claimant’s letter of 3 May, which I have treated as an application for reconsideration, is some 7 months after the original decision was sent to the parties. Plainly, also the variation requested by the Claimant is not a correction of a clerical mistake so cannot be dealt with under Rule 69. There is no explanation for the delay and no reason advanced other than the reference to the Redundancy Payments Office.
4. Although I have a discretion to extend time, such discretion must be exercised judicially, and I therefore reject the application as being out of time.
5. Even were I to entertain the application and extend time, it has no reasonable prospect of success. There was no evidence from the Respondent at any stage to indicate why they intended to terminate the Claimant’s Contract of Employment. The Claimant’s evidence, both in his Claim Form and in a Witness Statement which he gave at the Remedy Hearing, indicated that there had been a breakdown of a relationship with the CEO (the Claimant’s son) and the Claimant believed that he was bullied, had his wages cut and suffered further conduct which he believed was based upon the protected characteristic of age.
6. Thus, there was absolutely no evidence to indicate that the reason for dismissal was redundancy and thus the decision of unfair dismissal which was likely to have been tainted by age discrimination was the only one open to the Tribunal on the evidence that it heard.
7. **The Claimant might wish to draw to the attention of the Redundancy Payments Office the provisions of Section 184(1)(d) of the Employment Rights Act 1996.**

“184 Debts to which Part applies.

(1) *This Part applies to the following debts—*

(d) *any basic award of compensation for unfair dismissal or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement, and*

...”

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In monetary terms, the basic award for unfair dismissal is the same as a Redundancy Payment.

Employment Judge Blackwell

Date: 1 June 2022

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