



EMPLOYMENT TRIBUNALS

Claimant: Ms K Edwards

Respondents: The Commissioners for her Majesty's Revenue and Customs & Others

JUDGMENT

1601132/2021

On the Tribunal's own initiative, the judgment dated 15 March 2022 sent to the parties on 17 March 2022 striking out the claim against Mr Boston is revoked.

1601132/2021

The respondent's application dated 29 March 2022 for a reconsideration of the judgment dated 15 March 2022 sent to the parties on 17 March 2022 is refused.

1601132/2021 and 1601653/2021

The claimant's application dated 31 March 2022 for reconsideration of the judgment dated 15 March 2022 sent to the parties on 17 March 2022 is refused.

REASONS

Background and introduction

1. The Tribunal decided on its own initiative that the judgment striking out the claim against Mr Boston advanced in 1601132/2021 should be revoked as it was made in error.
2. On 29 March 2022 the respondent applied for reconsideration of the judgment not to strike out the claim advanced under paragraphs 1 and 2 of 1601132/2021.
3. On 31 March 2022 the claimant made an application for reconsideration of the above judgments.
4. Judge Moore considered, having regard to any response to the notice of reconsideration that a hearing was not necessary in the interests of justice.

The Law

5. The Tribunal's power to reconsider judgments are contained within Rules 70 to 73 of the Employment Tribunal Rules of Procedure 2013. Rule 70 provides it may be revoke or vary the judgment where it is necessary in the interest of justice. The process is contained with Rule 72. If the Tribunal considers there is no reasonable prospect of the judgment being varied or revoked the application shall be refused and no hearing will take place. Otherwise the Tribunal shall send a notice to parties setting out a time limit for response and seek views on whether it can be decided without a hearing.
6. The Tribunal must follow Rule 72 in the order outlined above (**TW White & Sons Ltd v White UKEAT 0022/21**). In exercising the power the Tribunal must do so in accordance with the overriding objective.
7. In **Ministry of Justice v Burton and another [2016] ICR 1128**, Elias LJ approved the comments of Underhill J in **Newcastle upon Tyne City Council v Marsden [2010] ICR 743**, that the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. Further, that the courts have emphasised the importance of finality (**Flint v Eastern Electricity Board [1975] ICR 395**) which militates against the discretion being exercised too readily.
8. In **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16** Simler P held:

“..a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

[35] Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing.”

Conclusions

Reconsideration on the Tribunal's initiative

9. There was no application by the respondent to strike out the claim against Mr Boston and he was included in error in the strike out judgment. There are not grounds to say the claim against Mr Boston does not have any reasonable prospect of success. It would not be in the interests of justice for the claimant to be denied the ability to bring this claim based on an error. For these reasons the judgment is revoked.

The Respondent's application for reconsideration

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10. The respondent applied for reconsideration of paragraphs 29 to 33 of the judgment. This is in respect of the claimants S26 EQA 2010 claim under claim 5, 1601132/21. I declined to strike out paragraphs 1 and 2 of this claim. The claimant alleges that Mr Boston's decision dated 7 May 2021 amounted to sexual harassment. The judgment records the discussion with the claimant as to how the claimant maintains this decision can fall under S26 and records that it falls squarely under S26 (3) EQA 2010.
11. The respondent advances grounds that if no conduct of a sexual nature is found to have occurred then it follows section 26 (3) (b) and (c) cannot be engaged.
12. The claimant seeks to complaint that it was Mr Boston's decision that amounted to sexual harassment rather than conduct by Mr XY that the previous Tribunal found was not conduct of sexual nature. As such, this is a claim that remains in my view one that must be determined after hearing evidence and submissions by the parties. For these reasons I decline to vary or revoke the decision not to strike out the claim.

The claimant's application for reconsideration

Claim 5 – 1601132/2021

13. The claimant has referred to this as claim 6, which must be an error as claim 5 (1601132/2021) sets out the claimant's claim of sexual harassment against Mr Boston. This is the same claim that the respondent sought reconsideration discussed in paragraphs 9 – 11 above.
14. The claimant seems to be objecting to her claim being limited to a claim under S26 (3) EQA 2010 which is dealt with in paragraphs 29 – 33 of my judgment. The claimant states she considers her claim also falls under S26 (1) EQA 2010.
15. The judgment does not strike out a claim under S26 (1) EQA 2010. There is no part of the judgment that needs to be varied or revoked and this can be addressed in the list of issues. For the avoidance of doubt, if the claimant wishes to advance a claim under S26 (1) EQA as well as S26 (3) EQA that Mr Boston's decision of 7 May 2021 sexually harassed her she may do so.

Claim 6 -1601653/2021

16. The claimant seeks reconsideration of the strike out of paragraph 4 (e) which is dealt with at paragraphs 57 - 59 of the judgment. The claimant acknowledges the claim might technically be out of time but asks for reconsideration on the basis it would be just and equitable to extend time. The claimant goes on to provide evidence as to reasons why it would be just and equitable.
17. The hearing on 8 and 9 March 2022 was listed to determine the time issue. This was the claimant's opportunity to provide evidence on whether it would be just and equitable to extend time. In paragraph 34 (c) of the order dated 28 October 2021 it specifically stated that this issue would be determined at the hearing on 8 and 9 March 2022, including a reference as to whether it would be just and equitable to extend time. At paragraph 49 the claimant had permission to file a witness statement to address these matters.
18. Judge Moore determined the strike out application on the basis of the evidence and submissions at the hearing on 8 and 9 March 2022. If new evidence is advanced the claimant has not explained why that evidence was not available at the hearing on 8 and 9 March 2022. It is not in the interests of justice to permit the

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claimant to advance new evidence or seek to re-litigate her position in a reconsideration application, particularly where it has not been explained why this was not addressed at the hearing on 8 and 9 March 2022. Having regard for the need for finality of litigation, this application is refused.

Request to reconsider deposit order on other subsections of paragraph 4 claim 6

19. A deposit order is a case management order and as such it is not a judgment that can be reconsidered.

Employment Judge S Moore

Date: 22 June 2022

JUDGMENT SENT TO THE PARTIES ON 27 June 2022

FOR THE TRIBUNAL OFFICE Mr N Roche