



EMPLOYMENT TRIBUNALS

Claimant: Mr D Klosowski
Respondent: Trelleborg Industrial Products UK Limited

Decided at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
On: 22 and 23 June 2022
Before: Employment Judge Adkinson sitting alone
Decided on the papers alone

JUDGMENT ON APPLICATION FOR RECONSIDERATION

There is no reasonable prospect of the original decision being varied or revoked. Therefore the application is dismissed under **rule 72(1)** of the Employment Tribunal's rules of procedure.

REASONS

1. On 22 and 23 June 2022 I heard a preliminary hearing in this case. I ordered, amongst other things, as follows:
 - “3. the claimant’s applications to amend
 - “ 3.1. his claim of procedurally unfair dismissal are allowed in that he may rely on paragraphs 21, 22 and 23 of his “Claimant’s Clarification of Claims” dated 12 August 2021,
 - “ 3.2. but otherwise are refused;
 - “4. the respondent’s application to strike out the claimant’s claims because (a) it is scandalous and vexatious, (b) the manner in which the claimant or his representative had conducted the proceedings was scandalous or vexatious or unreasonable, (c) the claimant had not complied with case management orders, and/or (d) a fair hearing was no longer possible:
 - “ 4.1. succeed insofar as all claims of discrimination, harassment and victimisation are struck out, but
 - “ 4.2. are dismissed in relation to the claim for procedurally unfair dismissal;

“ ...

“6. the claim for procedurally unfair dismissal will proceed to a final hearing. Directions will be made separately.”

2. I made separate directions in relation to the claim for unfair dismissal. I adjourned generally an application the respondent had made to strike out the claims on the grounds they had no reasonable prospect of success or that the claimant pay a deposit because they had little reasonable prospect of success.
3. The judgment was sent to the parties on 16 July 2022. The application for reconsideration is made on 29 July 2022. It is therefore in time.
4. I refer to that judgment and accompanying written reasons in full. In summary I concluded (so far as relevant) that
 - 4.1. the claimant's conduct of the claim was unreasonable ([84] onwards);
 - 4.2. the claimant had not complied with the Tribunal's orders ([89]);
 - 4.3. a fair trial is no longer possible in relation to the claims under the **Equality Act 2010** ([90] onwards);
 - 4.4. striking out the claims under the **Equality Act 2010** was proportionate in the circumstances ([93] onwards)
5. I also refused the claimant's application to amend ([54]-[70]), and the claimant's application for more time to present medical evidence about his alleged disabilities ([51]-[53]).
6. The claims for unfair dismissal were allowed to proceed since a fair trial was possible in respect of those claims.
7. At that hearing each party had full opportunity to make submissions. I note in particular that
 - 7.1. The claimant made additional submissions after the hearing on the application to amend (see [23]-[24] and [68] onwards) which I took into account.
 - 7.2. The claimant did not raise any suggestion of unfairness at the hearing and I was satisfied it was a fair hearing;
8. In making this decision I have in mind my judgment and everything I said in it. I have taken into account the Tribunal's file and the original bundle too.
9. I turn then to deal with the application for reconsideration. For brevity I have grouped together what I understand the main submissions to be and dealt with them in turn.
10. **Claimant's honest belief all information provided:** this ignores the fact that, as the claimant conceded at the hearing, he had not provided all information needed to understand the claims. He had the benefit of my order from the first preliminary hearing that set out what was needed. That order was never challenged or asked to be varied. However on 3 occasions he re-set out his claim (with applications to amend where appropriate) and ignored the order by still not providing the key information. He conceded

this at the hearing (see [64.6]). He never provided the key information, even though the order set out what it was (see [64.5]).

11. **The trial would not have to be postponed:** this is not correct for the reasons set out in my original reasons to the judgment (see [71.7] and [90.3], [90.5], [90.6.3] and [93.8]). In short, the claim was still unclear. It was impossible to know how long would be required for a final hearing when the claim was still not particularised. The trial was about 6 months' away. There was too much to do in the short time. This application does not say why it was wrong to conclude that. The application does not demonstrate how it could realistically be avoided.
12. **Respondent not prejudiced:** This is patently wrong. I have set out why in my judgment and reasons (in short deceased and absent witnesses, faded memories, claims still not particularised – see [90], [93.7]). The application sets out basis for why that conclusion is wrong or how that prejudice can be eliminated to allow for a fair hearing.
13. **Respondents should have said what was missing:** While co-operation in litigation is to be encouraged, I do not consider it properly arguable that the respondent should be expected to tell the claimant what they needed to do. It ignores that the orders set out clearly what was required and the claimant was late purporting to comply and in fact did not comply
14. Besides in June 2022 the respondent provided a draft Scott Schedule to assist the claimant after he failed to provide the information requested. The claimant's suggestion he awaited translation services does not explain why the required information was still missing by the time of the hearing.
15. **Statement on means.** In my case management order of 9 July 2021 sent to the parties on 20 July 2021 I ordered as follows
Statement on means
"34. At the next hearing the Tribunal may consider making a deposit order as a condition of the claimant continuing some or all of his claims. The Tribunal will want to take into account the claimant's means before doing so.
"35. Therefore by no later than 14 days before that hearing the claimant should write to the Tribunal and respondent setting out his income, expenses, assets and liabilities."
16. The order was plain and clear. The claimant received the order. It was made in the claimant's presence. The claimant did not abide by it. The claimant filed it late (though in and of itself it would not be a reason to strike out the claims or part of them). It is not for the Tribunal's staff to tell the parties if they have missed orders or give advice. It seems the claimant ignored the order. Therefore the confusion the claimant alleges cannot possibly justify a reconsideration since he had the order before him. It is appropriate to take this failure into account when exercising discretion.
17. **Bundle not agreed:** At [6] I recorded the bundle was agreed. I note the bundle itself contained documents either the claimant created, were provided by him or which were sent to him. The request for reconsideration does not set out what crucial documents were missing or why they might

lead to the order being set aside or varied. If the claimant felt that the late provision of the bundle was such that he could not have a fair hearing he could have raised the issue at the time. He did not. It is not obvious why the provision of the bundle would have created unfairness given the reasons for the hearing were provided well in advance. I see nothing inherently unfair about when it was provided. Thus I am unable to discern anything that points to any unfairness arising from the bundle.

18. **Additional documents supplied:** The claimant has provided me with the following documents (using the titles of the files). In relation to those I have not seen before I will assume (without deciding) that they are admissible under the rule in **Ladd v Marshall**.

18.1. “Mr DK Reply to Respondent List of Issues 162021 (4).pdf”. It purports to clarify the claim. It does not. It was not in the bundle. But it is irrelevant because it precedes the preliminary hearing on 9 July 2021 where I ordered the claimant to provide clarification and set out what was required. They were noted in that hearing by reference in paragraph [4] where I said

“4. The respondent asked for further and better particulars. The claimant provided them. They do not clarify the claim but provide only more narrative. They purported to suggest the claimant also claimed direct discrimination because of disability and discrimination arising because of a disability. They add a personal injury claim.”

It adds nothing therefore because it is my order of 9 July 2021 which sets out what is required and which the claimant admitted he failed to comply with that matters.

18.2. “Mr D K Email Exchanges.pdf”. I have considered these but they do not in my view assist the claimant. They show the respondent raised the issue about a lack of information on 1 June 2022. The bundle shows however this has been an ongoing issue, as does my last case management order.

18.3. “Mr Daniel Supporting Documents.pdf” Their relevance is not explained. They appear to contain documents between him and his employer about his workplace issues. They do not shed any light on whether I should reconsider my judgment since they do not outweigh the arguments in favour of the order I made. The medical reports included were in the bundle before me in any event (see [41]).

19. Finally I have taken a step back and looked that application as a whole rather than in discrete parts. I see nothing that suggests I should reconsider my judgment. In fact the overall impression is that it appears to be no more than a plea for sympathy for the claimant to be allowed yet another chance to get his claim straight. That is not a justification for reconsideration. Besides there is nothing that persuades me that this time the claim would be clear given his past approach to clarification of the claims.

Employment Judge Adkinson

Date: 1 August 2022

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.