



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Dr E Sarkar

AND

Respondent
University Hospitals Plymouth NHS Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON

25 August 2022

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's renewed application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the judgment dated 9 May 2022 which was sent to the parties on 25 May 2022 ("the Judgment"). The grounds are set out in her letter dated 8 June 2022. That letter was received at the tribunal office by email on 8 June 2022.
2. The claimant has submitted a number of appeals to the Employment Appeal Tribunal and in an attempt to assist all parties this judgment confirms the position concerning the strike out of the claimant's remaining 19 detriment claims, and the rather confusing position following the claimant's various applications opposing that strike out.
3. The relevant background is as follows.

4. These proceedings originally related to 26 claims of detriment which the claimant asserted she had suffered on the ground that she had raised a protected public interest disclosure. The claimant selected her seven Chosen Detriments and her claims in this respect proceeded to a full main hearing where those claims were dismissed. This left 19 claims of detriment remaining, which had earlier been stayed by consent, and which the claimant now wished to resurrect. The respondent applied for a deposit order to be made as a condition of the claimant being permitted to pursue those remaining detriment claims. I made a Deposit Order on 9 March 2022 which was sent to the parties on 15 March 2022 ("the Deposit Order"). I gave full written reasons for making that Deposit Order in a Case Management Order also dated 9 March 2022, which was also sent to the parties on 15 March 2022 ("the Case Management Order"). The claimant was represented by Counsel at that time who had opposed the respondent's application on her behalf.
5. The Deposit Order required payment to be made within 21 days from the date the order was sent to the parties on 15 March 2022. The effect of this was that the claimant's remaining 19 detriment claims would be struck out if the deposit were not paid as ordered on or before 5 April 2022.
6. Immediately upon receipt of the Deposit Order by email dated 15 March 2022 the claimant sought advice from the Tribunal office on two matters: first she sought information as to the procedure for requesting reconsideration of the Deposit Order; and secondly the procedure for appealing the Deposit Order. It seemed that the claimant was now a litigant in person and did not have legal representation. By a second email later that day on 15 March 2022 the claimant confirmed that she was making a reconsideration application in respect of the Deposit Order under Rule 70, and she complained that the Case Management Order had not given any information on how to pursue an application for reconsideration. No reasons were given to support that application for reconsideration.
7. By email dated 1 April 2022 the Tribunal office informed the claimant that the Employment Tribunals were a statutory body and that they were unable to advise her. The Tribunal office confirmed that it would continue to communicate with the claimant as a litigant in person unless she notified the Tribunal office that she had appointed legal representatives.
8. On 5 April 2022 the claimant notified the Tribunal office that she had appealed the Deposit Order to the Employment Appeal Tribunal, and she made an application for a stay of the Deposit Order pending that appeal. By letter dated 6 April 2022 the respondent objected to that application for a stay, and that letter gave their reasons. The claimant then sent two further emails on 6 April 2022: the first disputed the respondent's grounds for objection; and the second asked for clarification that the claim would not be struck out because she had made an application for a stay. The claimant's application for a stay of the Deposit Order was only referred to me on 26 April 2022 and the claimant was informed on 26 April 2022 that her application for a stay was refused, and reasons were given.

9. Meanwhile the Deposit Order had taken effect by virtue of Rule 39(4) because the claimant had not paid the deposit as ordered on or before 5 April 2022 and her claims had in fact already been struck out by reason of the Deposit Order.
10. On 29 April 2022 the claimant then emailed the Tribunal office requesting an extension of time of 14 days to pay the deposit ordered under the Deposit Order. On the same day the respondent sent an email objecting to that application.
11. On 9 May 2022 I signed a judgment confirming that the claimant's claims had been struck out by virtue of the Deposit Order. For some reason it was not sent to the parties until 25 May 2022. In addition, the Judgment was arguably unnecessary because it merely confirmed the effect of the Deposit Order under Rule 39(4). This is the Judgment in respect of which the claimant now seeks reconsideration.
12. Meanwhile on 10 May 2022 the claimant emailed the Tribunal office to confirm that she intended to pay the deposit as soon as she received a new cheque book from her bank. On 17 May 2022 the claimant paid the deposit which had been ordered. On the same day the Tribunal confirmed that the claims had already been struck out pursuant to Rule 39(4) because the deposit had not been paid by 5 April 2022 as ordered in the Deposit Order.
13. On 20 May 2022 the claimant then made an application for reconsideration of the decision to strike out the remaining 19 detriment claims. On 24 May 2022 the Tribunal emailed the parties to confirm that I had refused that application for reconsideration for the reasons set out in the email. In short these were that (i) the application been refused under Rule 72(1) because the application had no reasonable prospect of success; (ii) the Deposit Order was clear in its wording and effect; (iii) the claimant's application for a stay of the Deposit Order had been rejected; (iv) the Deposit Order was therefore effective; (v) the claimant had not paid the deposit within the time ordered; and (vi) the application of Rule 39(4) was that the Deposit Order had already taken effect and the claims had been already struck out.
14. The claimant responded by email dated 24 May 2022 to the effect that she had not sought reconsideration of the Deposit Order, but she was seeking reconsideration of the decision to strike out the claim, and the application was for reinstatement under Rule 40(5).
15. For the record, I do not agree with the claimant's assertion that she had not sought reconsideration of the Deposit Order because applications were made to that effect in her second email of 15 March 2022, and also in her email of 20 May 2022. As noted above that application was refused for the reasons confirmed in the Tribunal's email of 24 May 2022.
16. As noted above on 25 May 2022 the Tribunal office sent the Judgment to the parties which I had signed on 9 May 2022.
17. By email dated 8 June 2022 the claimant then made an application for reconsideration of the Judgment. The Employment Appeal Tribunal has requested confirmation as to the status of this application given the claimant's appeal. That application was only referred to me today, 25

- August 2022. The grounds of the claimant's application were (in short) that she had applied for a stay, and that she had assumed that the claim would not be struck out pending that application; that following the rejection of her application for a stay the deposit had been paid in full, and before the Judgment was sent to the parties on 25 May 2022; and that her application was compliant with Rule 40(5).
18. It is this application which falls to be considered in this judgment.
 19. 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 (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit (to the extent that it refers to the Judgment, and not the earlier Deposit Order).
 20. 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.
 21. A number of matters appear to have given rise to some confusion. In the first place the claimant refers to her compliance with Rule 40(5), but in my judgment this is not relevant because Rule 40 relates to the non-payment of fees (when these were earlier required for Tribunal applications) and is not relevant to Deposit Orders under Rule 39. Secondly, some confusion may have arisen because the Judgment which is the subject of this application is a confirmatory Judgment which is arguably unnecessary given the automatic effect of the earlier Deposit Order under rule 39(4), that is to say the claims were struck out automatically when the deposit was not paid by 5 April 2022, and the Judgment merely confirms this earlier effect of the Deposit Order. Thirdly, the claimant has in effect already made an application for reconsideration of the Deposit Order, which has already been refused for the reasons given in the email from the Tribunal dated 24 May 2022.
 22. The claimant now seeks reconsideration of the Judgment, which effectively is a repeated application for reconsideration which has already earlier been refused. The reasons given are (i) that she made an application for a stay of the deposit order and assumed that her claims were not be struck out pending that application; (ii) that following rejection of her application for a stay she subsequently paid the deposit in full, and before the Judgment sent on 25 May 2022; and (iii) she had complied with Rule 40(5). Dealing with each of these in turn: (i) the claimant was never informed by the Tribunal office that the Deposit Order would not take effect pending her application for a stay, and the terms of the Deposit Order were clear in their wording and effect; (ii) when the claimant paid the deposit on 17 May 2022 the Deposit Order had already taken effect to strike out her claims on 5 April 2022 by reason of Rule 39(4); and (iii) Rule 40(5) is not relevant to the effect of a Deposit Order.
 23. In my judgment this current application is a further attempt to oppose the Deposit Order which was clear in its wording and effect. The Deposit Order

was made on the respondent's application in circumstances where the claimant was represented by Counsel to oppose that application, and full written reasons were given in the Case Management Order at the time. The claimant's earlier attempts to stay the effect of the Deposit Order, and/or to unravel it by way of applications for reconsideration, were all opposed by the respondent, and those applications were rejected, with reasons given at the relevant times.

24. Accordingly, I refuse this (repeated) application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge N J Roper
Date: 25 August 2022

Judgment sent to Parties: 26 August 2022

For the Tribunal Office