



EMPLOYMENT TRIBUNALS

Claimant: Ms G Nkoumbou

Respondent: Connect Assist Ltd

RECONSIDERATION DECISION

The Claimant's application dated 28 March 2022 for reconsideration of the Judgment dated 18 February 2022 is refused.

REASONS

The reconsideration application

1. I have undertaken a preliminary consideration of the Claimant's application for reconsideration.

2. In the process of submitting her application for reconsideration the Claimant sent the Tribunal a number of emails, as below:

19 February 2022

23 February 2022

24 February 2022

2 March 2022

7 March 2022

10 March 2022

11 March 2022

12 March 2022

17 March 2022

24 March 2022

26 March 2022 09:50

26 March 2022 15:54

27 March 2022 23: 59 attaching 6-page PDF referenced as reconsideration

28 March 2022 00:10 attaching 6-page PDF (cover email stating: "I sent the wrong one. I shouldn't have edited the one that was sent to me")

28 March 2022 02:44 and two attached documents one 2 pages labelled as supplemental reconsideration and one 6-page PDF.

3. However, I consider the attachments to the email dated 28 March 2022 at 02:44 contain the basis of the Claimant's application for reconsideration.

4. In summary, I consider the basis of the Claimant's application to be based on the following:

A – she considers the ACAS freezing period was not taken into account;

B – she says documents needed for the hearing were not given to her on time;

C – she says the original decision was wrong and it is in the interests of justice to reconsider.

5. The Respondent provided comments on the Claimant's application for reconsideration on 16 May 2022.

The law

6. An application for reconsideration is an exception to the general principle that (subject to an appeal on a point of law) a decision of an Employment Tribunal is final.

7. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as amended set out the rules governing reconsiderations.

8. The pertinent rules are as follows:

“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."

9. Under Rule 72(1) I may refuse an application based on a preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

10. I have also considered the Overriding Objective.

"Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a)ensuring that the parties are on an equal footing;

(b)dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c)avoiding unnecessary formality and seeking flexibility in the proceedings;

(d)avoiding delay, so far as compatible with proper consideration of the issues; and

(e)saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

Decision

11. In accordance with the Employment Tribunal Rules of Procedure I must reconsider any judgement where it is in the interest interests of justice to do so. Further, if I considered that there is no reasonable prospect of the original decision being varied or revoked, I must refuse the application for reconsideration. The only ground for reconsideration is where it is in the interests of justice, it is not a process which should be used simply where a litigant is unhappy with the outcome. In considering the application I have taken into account the Overriding Objective.

12. The issues to be decided at the preliminary hearing on 18 February 2022 were discussed in detail at the start of the hearing and are set out in the list of issues within. The written Judgment and Reasons properly addresses the issues.

13. The written Judgment and Reasons were sent to the parties on 14 March 2022 and explain why the Claimant's claim was not permitted to continue, namely that the claim was submitted out of time.

15. It is for me to reach findings on the facts that took place based on the evidence presented, although the Claimant appears to disagree with the factual findings.

16. Now turning to each ground as below.

A – she considers the ACAS freezing period was not taken into account.

17. The Written Reasons clearly set out the findings of fact in this respect. Although the Claimant contacted ACAS for the purpose of advice, she did not engage in Early Conciliation, as evidenced by the Early Conciliation Certificate, until 3 April 2020, after submission of the ET1.

18. The Claimant's interpretation of the early conciliation extension provisions is incorrect.

19. Section 207B(3) of the Employment Rights Act 1996 provides that the clock is frozen from the day after "Day A" until "Day B". Day A and Day B, as recorded on the Early Conciliation Certificate was 3 April 2020.

B – she says documents needed for the hearing were not given to her on time.

20. The Claimant has not specified what documents she is referring to. It is noted that an agreed Bundle was available for use at the preliminary hearing. No new evidence and no documentation was provided with the application for reconsideration.

C – she says the original decision was wrong and it is in the interests of justice to reconsider.

21. It was clearly explained that no determination of whether the Claimant was disabled or not was taking place at the Preliminary Hearing. Further, no decision was made in relation to the substantive elements of the claim. The decision to dismiss the claim was made on the basis it was out of time, based on the evidence before me at the preliminary hearing.

22. Having considered the Claimant's application for reconsideration I am satisfied on the basis on what is before me that there is no reasonable prospect of my original decision being varied or revoked. The application does not establish that it is in the interests of justice to reconsider the judgment.

23. The application for reconsideration is therefore refused.

Employment Judge G Cawthray

9 September 2022

JUDGMENT SENT TO THE PARTIES ON 12 September 2022

FOR THE TRIBUNAL OFFICE Mr N Roche