



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss S Hawkins

AND

Respondent

Currys plc

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 10 November 2022

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is granted. The Judgments striking out the claims of unfair dismissal and for a redundancy payment, dated 23 May 2022 and 5 July 2022 respectively, are revoked.

The claims of unfair dismissal and for a redundancy payment are reinstated and shall be served on the Respondent.

REASONS

1. The claimant has applied for a reconsideration of the Judgment dated 23 May 2022, striking out the claim of unfair dismissal which was sent to the parties on 14 June 2022 and the Judgment dated 5 July 2022 striking out

- the claim for a redundancy payment, which was sent to the parties on 8 July 2022 (“the Judgments”).
2. On 29 April 2022, the Claimant was sent a strike out warning informing her that one her claims was for unfair dismissal and there was a requirement that she had two years’ service to bring the claim and it appeared she did not. The Claimant was given until 13 May 2022 to say why the claim should not be struck out. No reply was received and the claim was struck out on 23 May 2022.
 3. On 16 June 2022, the Claimant was sent a strike out warning in relation to her claim for a redundancy payment on the basis that she did not have 2 years’ service. The Claimant was given until 1 July 2022 to say why the claim should not be struck out. No reply was received and the claim was struck out on 5 July 2022.
 4. On 10 October 2022, the Claimant e-mailed the Tribunal. She said that weekend she had noticed her claims had been struck out for having less than 2 years’ service. She said it was incorrect and she had been employed by the Respondent for over 21 years. She asked for the decision to be reconsidered.
 5. On 27 October 2022, the Claimant was asked to explain why the reconsideration application had been made in October 2022, when the time for applying for a reconsideration was 14 days after the Judgment had been sent to the parties. The Claimant was also sent the correspondence referred to above.
 6. On 1 November 2022, the Claimant wrote to the Tribunal. She said that she started work for the Respondent in 2000 and that had been stated on the claim form and therefore she had 21 years’ service. She had not received the correspondence from the Tribunal, or it had gone into a ‘junk box’ which automatically empties after 10 days. She was unable to explain what had happened.
 7. The application was considered on the papers.
 8. 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 not received within the relevant time limit.
 9. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired. In the

present circumstances the Claimant was correct that she had stated on the claim form that her employment commenced in the year 2000 and therefore she had more than 2 years' service. An error had been made in sending the strike out warnings in the first place. The Claimant provided a good reason as to why the application had not been made within the time limit, namely she had not received the correspondence. This seemed likely given, if the Claimant had received it she would have simply said that the dates on the claim form showed she had sufficient service. It was therefore just and equitable to extend time.

10. 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.
11. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".
12. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.
13. In Outasight VB Ltd v Brown [2015] ICR D11, EAT, HHJ Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows the tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *'which means having regard not only to the*

interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation’.

14. In the present case, the Claimant had provided the dates of her employment on the claim form and they disclosed that she had more than 2 years’ service. The strike out warnings were sent in error. The Claimant did not receive the strike out warnings and therefore was unable to respond. If the application is not granted the Respondent would receive a windfall on the basis of an error, not of the Claimant’s making. It was in the interests of justice to reconsider the strike out judgments . The Judgments striking out the claims should not have been made and are revoked. The claims of unfair dismissal and for a redundancy payment are reinstated and shall be served on the Respondent.

15. Accordingly the application for reconsideration is granted.

Employment Judge Bax
Date: 10 November 2022

Judgment sent to Parties: 18 November 2022

FOR THE TRIBUNAL OFFICE