EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Badshah**

Respondent: **Castle Villas Ltd**

Heard at: **Sheffield** **On: 8 July 2021**

Before: **Employment Judge Brain**

Appearances:

For the claimant: written representations.

For the respondent: written representations.

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. Upon the claimant's application for reconsideration (subject to paragraph 2) there is no reasonable prospect of the Reserved Judgment promulgated on 21 April 2021 *('the Judgment'*) being varied or revoked.
2. It cannot be said that there is no reasonable prospect of the Judgment being varied to permit the following complaints to proceed by way of amendment:
   2.1. That the claimant suffered an unauthorised deduction from her wages between February and June 2020 inclusive;
   2.2. That the respondent failed to pay the claimant her holiday pay for the period between 28 October 2019 and 30 June 2020;
3. The claimant's application for relief from sanction by reason of material non-compliance with the Unless Order dated 7 September 2020 ('*the Unless Order'*) is refused.

REASONS

1. In **Chandhok v Turkey** [2015] IRLR 195 the then-President of the Employment Appeal Tribunal HHJ Langstaff said in paragraph 16 that, *"The claim, as set out in the ET1, is not something to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer*

a witness statement, nor a document, but the claims made – meaning … the claim as set out in the ET1".

2. He went on to say in paragraph 18 that *"… a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost a jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings".*

3. The prescience of the then-President's words of the need for parties to ensure that the entirety of their pleaded case is set out in the ET1 is well illustrated by the complex procedural history of this matter and the difficulties that have arisen from the way in which the claimant's case has been presented. The history of the case was set out by me in the Reserved Judgment *("the Judgment"*) promulgated on 21 April 2021. I shall not set out the history again here.

4. On 3 May 2021, the claimant made an application for reconsideration of that part of the Judgment dealing with the amendment application. She said (in her email of 3 May timed at 10:28) that, *"On 21 April 2021, Employment Judge Brain refused my application to amend the claim. The 2 October 2020 amendment application contained unlawful wage deduction. C request a reconsidered in interest of justice".* In a separate email of 5 May 2021, she made a second application for reconsideration of her amendment applications: this was not confined simply to the application to amend to include the unlawful deductions from wages claims. This application ran to over six pages.

5. On 4 May 2021, the claimant made an application to revoke the deposit order made by Employment Judge Wade on 7 September 2020 ('*the Deposit Order'*) and to set aside the judgment made by Employment Judge Lancaster promulgated upon 9 October 2020 striking out the claimant's claim that she suffered an unauthorised deduction of wages for the period between October 2019 and January 2020.

6. On 4 May 2021, the claimant made an application for relief from the sanction imposed in the Judgment by reason of her failure to comply with the Unless Order. She also applied for revocation of the Unless Order.

7. The claimant made further representations on 2 July 2021 at the invitation of the Tribunal.

8. It is unfortunate that the claimant has chosen to make so many separate applications. This only adds complication to an already complex picture. Regrettably, it is the hallmark of the way in which the claimant has chosen to run this case throughout.

9. The applications made by the claimant to revoke the Unless Order and the Deposit Order and for reconsideration of the judgment of 9 October 2020 have been dealt with by Employment Judges Wade and Lancaster respectively and have been refused.

10. I shall deal with the claimant's applications for reconsideration of the Judgment and for relief from sanctions.

11. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.

12. In this context, *'a judgment'* means (amongst other things) a decision which finally determines a claim. I am satisfied that a refusal to allow an amendment of a claim falls within this definition as a refusal effectively finally determines a claim.

13. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record of the decision was sent to the parties. It follows therefore that the claimant has made her applications for reconsideration of the Judgment within the relevant time limit.

14. Under Rule 70, a Judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a Judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, finality of litigation.

15. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:

    15.1. Ensuring that the parties are on an equal footing;

    15.2. Dealing with cases in ways which are proportionate to the complexity and importance of the issues;

    15.3. Avoiding unnecessary formality and seeking flexibility in the proceedings;

    15.4. Avoiding delay, so far as compatible with proper consideration of the issues;

    15.5. Saving expense.

16. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there is no reasonable prospect of the original decision being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is no reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because they disagree with the decision.

17. If the Employment Judge considers that there is no reasonable prospect of the decision being varied or revoked, then the application shall be refused. Otherwise, the decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application in the first instance is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked.

18. The reconsideration application of 5 May 2021 is of much wider scope than that of 3 May 2021. The latter only seeks reconsideration of my Judgment upon the claimant's application to amend her claim to include that she suffered unauthorised

deductions from her wages (both in respect of wages due and holiday pay - for convenience I shall now refer to these together as *'the wages claim'*). The former appears to seek reconsideration of my refusal to permit amendment of the claim to include a wide range of matters other than those identified in paragraph 39 of Employment Judge Wade's Order of 7 September 2020 and those matters which stand dismissed by reason of non-compliance with the Unless Order.

19. On 28 January 2021, in anticipation of the claimant making an amendment application, I made an Order (as set out in paragraph 2.2(b) which was sent to the parties on 8 February 2021) directing the claimant to address the issues in sub-paragraphs (1) to (5). The claimant sought to comply in her document of 26 February 2021.

20. I am satisfied that there is no reasonable prospect of the Judgment being varied or revoked in respect of the amendment application (other than in respect of the wages claim).

21. In so far as the application of 5 May 2021 seeks to repeat the arguments made on 26 February 2021, I am satisfied that the Judgment was legally sound and that the application to amend was properly refused. The claimant's application fails to point to any legal error and is made upon the premise that she simply disagrees with the Judgment.

22. In so far as the claimant's application of 5 May 2021 and representations of 2 July 2021 seeks to introduce new matters and arguments not raised on 26 February 2021, I am satisfied that it is not in the interests of justice for the Judgment to be varied or revoked. The interests of justice apply to both parties. It is therefore unjust that the claimant should be permitted to have a second bite of the cherry and advance arguments which could have been set out in the document of 26 February 2021. I also have regard to the overriding objective to deal with matters proportionately and the public interest in the finality of litigation. There is no explanation from the claimant as to why the fresh matters advanced in her application of 5 May 2021 or on 2 July 2021 could not have been put before the Tribunal on 26 February 2021.

23. I am satisfied therefore that there is no reasonable prospect of the Judgment being varied or revoked save in respect of the wages claim.

24. In my judgment, it cannot be said that there is no reasonable prospect of the Judgment being varied to permit the claimant to proceed with those claims by way of amendment. The claimant is correct to point out that the application to amend to include those claims was made on 2 October 2020. By virtue of Employment Judge Lancaster's Judgment of 9 October 2020, the complaints that the claimant suffered an unauthorised deduction from her wages (in respect of work done in excess of her contractual hours) for the period between October 2019 and January 2020 have been struck out. This therefore leaves a complaint that she suffered an unauthorised deduction from wages between February 2020 and July 2020 and her claim for holiday pay. The claimant's contract of employment ended on 30 June 2020. However, her final wages will have been payable in July 2020.

25. Upon this basis, it appears that, if presented as a fresh claim, the wages claims (for unauthorised deduction from wages for work done between February and June 2020 and compensation for holidays accrued but untaken) made by way of application to amend on 2 October 2020 will have been presented in time. The claimant complains that she suffered a series of unauthorised deductions both in respect of her pay and

her holiday pay. Time will therefore start to run from the end of the series of deductions. The series of deduction would end when her June wages and holiday pay was due to be paid at the end of July 2020, that being (pursuant to section 23 (2)(a) of the Employment Rights Act 1996) the date of the payment of the wages from which the deduction was made.

26. Accordingly, it cannot be said that the application to amend the claim to include the wages claim for the period between February and July 2020 has no reasonable prospect of success.

27. The claimant has now (on 2 July 2021) made a fresh application to amend the claim for alleged post-employment detriment and victimisation. This will need to be considered at a hearing. In the circumstances, it is convenient and proportionate for this part of the reconsideration application to be considered at the same hearing. Case management directions may also be given. I shall therefore arrange for the listing of a hearing to consider these matters.

28. I now turn to the claimant's application for relief from the sanction arising from the dismissal of the claims within the claim form (other than those identified in paragraph 39 of Employment Judge Wade's Order) dismissed by reason of non-compliance with her Unless Order.

29. In the Judgment, I set out in paragraph 43 the relevant test to be applied upon an application for relief from sanctions.

30. The claimant's application for relief from sanction starts by making a request for the revocation of the Unless Order of 7 September 2020. This is a matter which has been referred to Employment Judge Wade who has refused the application. The Unless Order remains extant and therefore, I proceed to deal with the application for relief from sanctions.

31. I am satisfied that there is no reasonable prospect of this aspect of the Judgment being varied or revoked.

32. As I said in paragraph 43 of the Judgment, I need to consider:

    32.1. The seriousness of the breach;

    32.2. Whether there is a good explanation for the breach; and

    32.3. All the circumstances of the case.

33. In paragraph 18 of her application for relief from sanction, the claimant contends that she partially complied with the Unless Order. This is an admission that she has not wholly complied with it. There has been non-compliance with the Tribunal's Order. The breach is serious.

34. The claimant advances as good reasons for default that English is not her first language and that she suffers from mental health issues. Nothing is said in the reconsideration application which persuades me that these provide a good explanation for the breach.

35. I accept that English is not the claimant's first language. However, it is apparent from the history of the matter that the claimant has assistance and has submitted to the Tribunal documentation which is impressive in and of itself.

36. The claimant has submitted medical evidence in support of her case that she has mental health issues. I accept that she does so, but the same point remains - she has assistance and was therefore able to comply with the Unless Order but simply

did not do so. In fact, in paragraph 27 of her submissions she refers to having a legal representative available from 2018. The claimant has also not explained how the medical evidence demonstrates an inability to comply with the Unless Order. It is not for the Tribunal to try work out this out for itself from medical notes and records.

37. I must then consider all of the circumstances of the case. As I said in paragraph 46 of the Judgment, one set of trial dates has been lost. This was attributable to difficulty ascertaining the extent of the claimant's claims and the need for further case management. The difficulties that have beset this case have principally been because of the propensity of the claimant to seek to add claims as she goes along. This is contrary to the overriding objective as so clearly explained by the President in **Chandhok v Turkey**.

38. For the reasons I explained in the Judgment, it is simply not proportionate to allow the claimant to greatly expand the complaint in circumstances where the preponderance of the claimant's claims are for pecuniary loss arising from the dismissal which is before the Employment Tribunal in any case. Further, there is already a claim for non-pecuniary loss arising out of the extant victimisation claim. Disproportionate time and resource will be expended should the scope of this complaint be permitted to expand greatly. Such would be unjust to the respondent and in breach of the Tribunal's obligation to apply the overriding objective to keep matters proportionate.

39. I therefore direct that there shall be a hearing to deal with the following issues:

    39.1. Reconsideration of my refusal to permit the claimant to amend her claims to include the wages claims.

    39.2. Case management. For the avoidance of doubt, Order no: 5 made by me on 28 January 2021 is revoked and need not be complied with.

    39.3. The claimant's amendment application of 2 July 2021.

    39.4. No later than seven days before the hearing, the claimant shall send to the Employment Tribunal and to the respondent's solicitor any application which the claimant makes for specific disclosure of documents which the claimant says are relevant to any of the issues in the case. Any such application shall be considered and determined at the reconsideration hearing.

40. The claim is currently confined to the issues in paragraph 39 of Employment Judge Wade's Order of 7 September 2020 but may be expanded to include an unpaid wages' claim and the matters in the claimant's application of 2 July 2021.

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Employment Judge Brain

Date: 8 July 2021