



EMPLOYMENT TRIBUNALS

Claimant: Ms I Newsome

Respondent: Brake Bros Ltd

Before: Employment Judge P Cadney

Representation:

Claimant: Written Submissions

Respondent:

Reconsideration Judgment

The judgment of the tribunal is that-

- i) The claimant's application to reconsider and revoke the Judgment is dismissed.

Reasons

1. On 21st July 2022 I heard a preliminary hearing at which I determined that the claimant's claims had been presented out of time, and that it was not just and equitable to extend time; and that in consequence it was dismissed as having been presented out of time. The claimant sent what I understood to be a reconsideration application which I rejected by a written decision dated 10th October 2022. In fact the claimant asserted that that was not a full reconsideration application. She has made a full reconsideration application dated 29th November 2022.
2. The application is out of time, the time limit being 14 days. The claimant contends that her disability makes it impossible for her to make an application within 14 days, and that time should be extended. Whilst the application is very considerably out of time I have decided to extend time and consider the reconsideration application. For completeness sake I have included

consideration of each application and have repeated at paras 3 – 8 below my conclusions from the earlier application; and have set out thereafter any further points not already discussed.

10th October Decision

3. *The claimant has applied for reconsideration of that decision. The basis of the application is that “I grossly misunderstood what was required from the pre-hearing and believed I had entered into a tribunal in December so thought the claim was well within time.” In addition she states that although the last allegation of harassment relates to the end of October 2020 that she was following “Brake’s internal processes and they were taking their time.”*
4. *The first point is a difficult contention to follow, as the Preliminary Hearing was preceded by a telephone case management hearing before EJ Livesey at which he set out that the claim was submitted on 18th June 2021 and the basis for considering that the claim may be out of time, which was one of the reasons it was listed for a preliminary hearing (paras (para 49 – 1.2). In addition the first claim (which according to the claimant’s evidence before me was submitted in January 2021) had been rejected, after which the claimant entered into ACAS early consideration for the second time and submitted the second claim. The contention that the claimant believed that the first claim was still a or the live claim was not one that was advanced before me. Moreover, as is set out in my reasons the claimant’s evidence was that she had little or no recollection of the events and could provide no explanation of how or why she had come to present the original claim form in the form that she did, before entering ACAS early conciliation for a second time and presenting the second claim in June 2021.*
5. *The second point is not one that was advanced before me at the original hearing but in any event the problem remains for the claimant that she had submitted a claim, albeit one that had been rejected, whilst the internal processes were ongoing. It must follow that the internal processes had not in and of themselves prevented her from submitting a claim.*
6. *Whilst the only issue in respect of an application for reconsideration is whether it is in the interests of justice, there should be finality in litigation and in this case the effect of the reconsideration application, if successful, would have to be that the judgment would be set aside and the case listed for re-hearing in order to give the claimant a second chance to present evidence that she did not submit at the first. In order for this to be considered in the interests of justice there would need to be a very powerful reason given the obvious potential injustice to the respondent of having to re-litigate the same point again. In addition the purpose of reconsideration is not simply to give the losing party a second chance to succeed having failed the first time.*
7. *It follows that the claimant would need to show that she could present very powerful evidence that would at least possibly result in a different outcome. The claimant does not in the application set out what this evidence is or might be. This in my judgement is particularly significant given that, as is set out in my*

decision, the evidence before me was that the claimant had little or no recollection of the events.

8. *There is on the basis of the application and information before me nothing from which I could conclude that there is any prospect of the original decision being varied or revoked, and so in my judgement the application must be dismissed.*

29th November 2022 Application

9. Ambit of the claim- The claimant's first point is that the claim has been treated as having been submitted out of time as it relates to the allegations of sexual harassment of which the last is alleged to have occurred at in October 2020. The claimant asserts that her claim is much broader and includes claims against the respondent including the way it dealt with her grievance and "...forced me to go sick from work"; and a number of other matters she sets out in detail in the reconsideration application. She states that her belief is that time should have run from July 2021 when she left her employment.
10. However at Box 8.2 in the claim form she states "The details are, in short – I was sexually harassed by my manager and have since been unable to return to work." In addition she supplied a statement setting out the details of the claim which referred to events between July and October 2020. Moreover there was a case management hearing before EJ Livesey, the purpose of which is to clarify the claims being brought. In the CMO he records the claims as being those for sexual harassment (para 44) and he recorded claims for direct sex discrimination and/or harassment with factual basis being set out at para 49 / 3 / 3.1. In short the only claims recorded in the CMO relate explicitly to the allegations of sexual harassment and there is no claim asserted beyond those allegations. It was precisely because all the recorded allegations were on the face of it out of time that EJ Livesey listed the case for the preliminary hearing before me. The claimant has never suggested, at least until the current application, that EJ Livesey had mis-recorded the claims or that her claims were different from, and much wider than, those set out in the CMO.
11. The claims I had to consider were limited to those set out above, and there was no application at or before the hearing to seek to amend her claim, and it is not open to the claimant to seek to widen the ambit of the claim in a reconsideration application. I repeat the point made above that there is a public interest in finality in litigation, and that this application, if successful, would require the case to effectively start again with a further preliminary hearing listed, and directions given for the claimant to make an amendment application to bring new claims before considering whether there are time points which would need to be considered.
12. In addition she contends that the respondents position that she must have had a sophisticated understanding of EC conciliation, or was being advised by someone who had, in relation to the first conciliation process is unfair and that had she had such an understanding she would never have committed the procedural errors she did. Effectively she asserts that I should reconsider and conclude that at no stage did she have a proper understanding of the process and that the discretion to extend time should be exercised in her favour. The

difficulty for the claimant is that I took this into account in my original decision (see paras 12 and 13); and there is in my judgement nothing in the application which persuades me that there is any prospect of the decision being reversed were I to relist the case for a reconsideration hearing.

13. It follows that whilst I remain of the view that I have considerable sympathy for the claimant, I am equally of the view that the reconsideration application must be rejected.

Employment Judge P Cadney
Dated: 19th December 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
4 January 2023 by Miss J Hopes

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS