



EMPLOYMENT TRIBUNALS

Claimant: Mrs K. Nasreen

Respondents: (1) Dr A. Malik
(2) Dr A. Malik and Mr I. Ali t/a Malik Law Chambers
(in intervention)

JUDGMENT ON RECONSIDERATION APPLICATION

The judgment of the Tribunal is that: -

1. Dr Malik's application for a reconsideration of the Tribunal's decision not to permit him to participate in the liability hearing is refused because it was presented out of time and there are no good grounds for extending time.
2. Dr Malik's application for a reconsideration of the Tribunal's judgment on liability is refused because it was presented out of time and there are no good grounds for extending time.

REASONS

The ET hearings on remedy and liability

1. The judgment on liability in this case was sent to the parties on 13 January 2022, upholding the Claimant's claims of pregnancy discrimination, unfair dismissal and unauthorised deductions from wages. Oral reasons were given at the hearing. The Tribunal confirmed on the first day of the hearing (11 January 2022) that Dr Malik would not be permitted to participate in the hearing on liability.
2. By letter dated 14 January 2022, the case was listed for a one-day remedy hearing on 14 February 2022. The letter stated that the Tribunal had decided that the Respondents would be permitted to participate in that hearing, strictly in relation to issues of remedy, provided there was full compliance by them with the case management orders given in the letter.
3. On 1 February 2022, Dr Malik requested written reasons and indicated that he intended to appeal the judgment on liability. Written reasons were sent to the parties on 11 February 2022.

4. On the day of the remedy hearing, Dr Malik withdrew instructions from his Counsel, Ms Nanhoo-Robinson, to represent him at the hearing, but confirmed that he wanted the Tribunal to take into account the written submissions which she had lodged on his behalf.
5. Judgment and reasons on remedy were given orally at the hearing. The written judgment was sent to the parties on 17 February 2022.
6. By letter dated 19 February 2022, Dr Malik requested written reasons for the remedy judgment and indicated that he also intended to appeal against that judgment. Written reasons were sent to the parties on 11 April 2022.

The appeals to the EAT

7. According to the Tribunal's case file, Mr I. Ali lodged an appeal to the EAT against the Tribunal's judgment on liability on the grounds that Mr Ali was not aware of the case in the ET, was not served with any notice or documents related to the case and was abroad between October 2021 and 16 February 2022. The EAT reference assigned to Mr Ali's appeal was EA-2022-000171-LA.
8. According to the Tribunal's file, on 19 April 2022 a separate appeal by Dr Malik was rejected by the EAT because it had been presented out of time. The EAT reference for that appeal was EA-2021-001121-LA. On 23 December 2022, the ET received further correspondence from the EAT relating to the same appeal, attaching an order by Ms Kerr (on behalf of the Registrar), refusing Dr Malik's application for an extension of time in which to present his notice of appeal.

The EAT's order in relation to Mr Ali's appeal

9. On the same day, 23 December 2022, the Tribunal received further correspondence from the EAT in relation to Mr Ali's appeal, attaching an Order of HHJ Katherine Tucker, staying the appeal for 21 days (i.e. until 13 January 2023) 'to give opportunity to the Appellant to submit to the Employment Tribunal (and copy to the Employment Appeal Tribunal) an application for Reconsideration albeit out of time'. The Order did not contain the learned Judge's reasons for making it; of course, there may have been reasons why it would have been inappropriate to do so. The Appellant was identified in the order as 'Mr I. Ali'.
10. No application from Mr Ali had been received by the Tribunal by the date of this judgment (16 January 2023).

Dr Malik's application for reconsideration

11. On 6 January 2023, the Tribunal received an application for reconsideration from Mr Andrew Willis of Croner Group Limited. Mr Willis explained that Croner was representing Dr Malik. There was no reference to its representing Mr Ali.
12. Dr Malik sought a reconsideration of the Tribunal's decision to refuse Dr Malik permission to participate in the liability hearing for the reasons given at paragraph 29. He also sought reconsideration of the judgment of 13 January 2022, 'holding that Doctor Malik was liable as a partner of the Second Respondent for unfair dismissal and discrimination'. The grounds for

reconsideration all relate to Dr Malik's situation; they bear no relation to Mr Ali's grounds of appeal.

13. The only explanation for the presentation of Dr Malik's reconsideration application so long out of time was as follows:

'We acknowledge that this request is being made outside the usual time limit, however it has been submitted at the suggestion of the Employment Appeal Tribunal. The EAT has stayed our client's appeal (Appeal No. EA-2022-000171-LA) in respect of the same subject matter to allow us an opportunity to make this application (copy order attached).'

14. Both the EAT reference number quoted by Mr Willis in the passage above and the EAT Order which he attached related to Mr Ali's appeal, not Dr Malik's appeal. There is no reference in the letter to the fact that his appeal had already been rejected by the EAT.

Conclusion

15. No application for reconsideration having been received from Mr Ali by the date specified by the EAT, no further action will be taken in relation to the EAT's Order.
16. As for Dr Malik's application, on the face of it there appears to have been an attempt to mislead the ET into believing that the EAT had stayed his appeal, to give him an opportunity to seek a reconsideration from the ET when, in fact, it had rejected his appeal.
17. In any event, given that the only explanation for making the application nearly a year out of time related to Mr Ali's appeal, not to Dr Malik's, I am satisfied that there are no good grounds for extending time.
18. Accordingly, Dr Malik's application for reconsideration is refused.
19. A copy of this judgment will be sent to all parties. Copies to Mr Ali and to 'Dr Malik and Mr Ali t/a Malik Law Chambers (in intervention)' will be sent c/o Tan Chambers, and to the Claimant c/o Whitechapel Legal Advice Clinic, as per the addresses given by the EAT on its correspondence, which it is assumed are the most up-to-date contact details. A separate copy will be sent to Dr Malik c/o Croner at the email address on his reconsideration application.
20. A copy will also be sent to the Employment Appeal Tribunal for information.

Employment Judge Massarella

Date: 16 January 2023