



EMPLOYMENT TRIBUNALS

Claimant
Mr N Tucker

and

Respondent
Alternative Theatre Company Limited

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the Preliminary Hearing judgment of 10 March 2023, the application to reconsider the strike out is refused under Rule 72(1) as there is no reasonable prospect of the decision being varied or revoked.

REASONS

Introduction

1. The background to the Claimant's claim and history of the proceedings (including the conduct of the Preliminary Hearing (PH) on 8 March 2023) is set out in the Judgment of 10 March 2023, and accordingly it is not necessary to repeat the details here.

Application for reconsideration

2. By email dated 27 March 2023, the Claimant submitted a written request for reconsideration of that decision. The Claimant relies on "certain vulnerabilities" (which may be summarised as: homelessness, with a commensurate inability to access the internet; physical and/or mental ill health; a lack of funds; not being a British citizen) and which it is argued were not considered, and the conduct of the PH including the Respondent not placing certain relevant evidence before the Tribunal.

3. **Rules**

The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

70. Principles

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.

71. Application

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.

72. Process

- (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.*
4. The Tribunal's task at this stage is to consider whether reconsideration of the decision of 1 September 2021 is in the interests of justice. Where it considers there is no reasonable prospect of the decision being varied or revoked, under Rule 72(1), the application shall accordingly be refused.

Conclusions

5. This reconsideration application was considered at the initial (Rule 72(1)) stage on the papers. It was not considered necessary to seek the

Respondent's response thereto. The Claimant's application merely seeks to re-argue matters which have already been considered and determined by the Tribunal.

6. The Claimant did not recall having read the earlier case management summary in which EJ Stout set out the list of issues so an adjournment was taken for them to do so. It was then essential to clarify through questioning what issues the Claimant was pursuing and the detail thereof (which is not the same as hearing evidence or making findings on the merits of those complaints, or any of them).
7. It was similarly necessary to clarify through questioning the reasons on which the Claimant relied in relation to the time point because the Claimant did not appear to have prepared for the PH and specifically, had failed to produce a witness statement addressing this, contrary to EJ Stout's Orders.
8. There was no reasonable basis for the Claimant to have believed that this PH would be only a further case management hearing. The Notice of Hearing and covering letter of 19 January 2023 (which were both in the bundle for the PH) were very clear that this was a Preliminary Hearing and that a Judge would be considering whether to strike out all or part of the claim and/or whether to make a deposit order on all or part of the claim. The Claimant had been ordered to produce a witness statement 14 days before the PH, i.e. by 22 February 2023. They had not done so by the due date or at all, and their evidence on time was vague and lacked specificity on a number of points.
9. Having clarified the issues and having heard the Claimant's evidence, EJ Norris dealt with each of the Claimant's "vulnerabilities" in the PH judgment and made findings on the extent to which it could be accepted that they had affected the Claimant's ability to bring the complaints, or any of them, in time. It was specifically noted at paragraph 24 of the Judgment for example that the Claimant did not register with a GP until October 2022, which was significantly after the time limit for submitting their claim. Consequently, though no medical records were before the Tribunal, they would not have assisted in addressing the impact of the Claimant's mental (or physical) health on their ability to bring the claim in time in any event.
10. EJ Norris did not advise the Claimant as to the merits or otherwise of the chosen comparator, she simply drew the Claimant's attention to the relevant provisions of the Equality Act and suggested consideration be given to whether an actual and/or hypothetical comparator would be more appropriate. That is also recorded in the PH Judgment.
11. EJ Norris was satisfied from the evidence given on oath that the Claimant's nationality and lack of familiarity with the Employment Tribunal system had not prevented them from accessing advice. The Claimant had the requisite knowledge of the correct time limits but failed to meet them. EJ Norris did not consider that the Claimant stood a reasonable prospect of success of persuading the Tribunal to extend time in relation to those complaints which were struck out.

12. In all the circumstances, there is nothing in what is said by the Claimant which indicates that it is in the interests of justice to re-open matters. This application is refused as there is no reasonable prospect of the decision being varied or revoked.

Employment Judge Norris
Date: 27 March 2023

JUDGMENT SENT TO THE PARTIES ON

27/03/2023

FOR THE TRIBUNAL OFFICE