



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Miss W Yang

and

Respondents
R1 – Johnson Matthey Limited
R2 – Miss Vikki Roberts

DECISION ON APPLICATION FOR RECONSIDERATION

Under Rules 70-73 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. On 21 January 2021 the Claimant made an application for reconsideration of the Judgment sent to the parties on 7 January 2021. There is no reasonable prospect of the Judgment being varied or revoked on the grounds set out in the application for reconsideration. The application is refused.
2. Reasons for this decision are attached.

REASONS

Background

1. A 6 day full merits hearing was held on 2-9 November 2020. All claims failed and were dismissed. The reasons for this decision were given orally at the hearing. Written reasons were provided at the request of the Claimant. The judgment with reasons was sent to the parties on 7 January 2021.
2. On 21 January 2021 the Claimant made an application for reconsideration of the Judgment.

Relevant Law

3. Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 -

Rule 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.

Rule 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.

Rule 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 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. ...

4. In Trimble v Supertravel Ltd [1982] ICR 440, the Employment Appeal Tribunal said that on an application for review (now reconsideration), if a matter has been ventilated and properly argued during the course of Tribunal proceedings, then any error of law falls to be corrected on appeal and not by way of review.
5. In Newcastle-upon-Tyne City Council v Marsden [2010] ICR 743, the Employment Appeal Tribunal said that dealing with a case justly in accordance with the overriding objective in regulation 3 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (now rule 2 of schedule 1 to the 2013 regulations) required the application of recognised principles, in particular the importance of finality in litigation, since justice required an equal regard to be paid to the interests and legitimate expectations of both parties and that a successful party should in general be entitled to regard a Tribunal’s decision on a substantive issue as final, unless there are exceptional circumstances.

Decisions on Application for Reconsideration

6. The Claimant’s application for reconsideration was stated to be on 2 grounds – New Evidence and Procedural Mishaps.

7. New Evidence. The application included – *“Given the Respondents’ deception and evasiveness, the Claimant could not accurately discern the likely ‘principal’ reason of dismissal until receiving the Judgment, therefore, had not been able to claim Automatic Unfair Dismissal under section 103A ERA 1996, and alternatively, Detriment under section 47B ERA 1996, concerning ‘Protected Disclosure’.* The tribunal should allow introducing the new evidence and adding the aforementioned new points of law, to reshape the case conclusion.”
8. The reason for dismissal was considered at the full merits hearing.
9. The reason for dismissal was clearly set out in the Respondents’ witnesses evidence and was well-documented. The reasons for the dismissal were considered in detail by the Tribunal which found that (paragraph 33 of Reasons) *“The detailed dismissal letter, quoted at some length above, sets out what the Tribunal found were the true reasons for dismissal.”*
10. The claims did not include any reference to Protected Disclosures. The application to add claims of Automatic Unfair Dismissal under section 103A and Detriment under section 47B Employment Rights Act 1996 involves completely new claims not mentioned at any stage of the proceedings until now. These claims are significantly out of time, beyond the 3 month time limit. The Claimant’s employment ended in September 2018, over 2 years ago. The new claims would involve substantial further clarification, investigation and new evidence. There is no explanation of why such an amendment was not made earlier, for example at the preliminary hearings on 4 October 2019 and 10 January 2020 or at the full merits hearing. The prejudice to the Respondents in granting the application would be substantial in having to conduct further investigations and undergo a further Tribunal hearing. There are no grounds to allow such an amendment at this late stage in the proceedings. The application is refused.
11. Procedural Mishaps. The application included – *“The final hearing lasting from 2nd to 6th and 9th November 2020 has proceeded on a very unequal footing. ...*

On 3rd November 2020, the case management order decisions were made, including refusing Claimant’s bundle, refusing Claimant’s list of issue, and refusing amendment of claim by adding section 44 ERA 1996. The Claimant’s introduction statement and Claimant’s witness statement pointed out that the Respondents refused to disclose and still withheld significant amount of case relevant documents, and they persistently failed to comply with tribunal’s orders. But neither any decision was made nor any inference was drawn related to such Respondent’s conducts.

Subsequently, the hearing has proceeded to decide the issues that were predominantly drafted by the Respondents’ solicitor. ...

Given the Claimant's evidence being excluded or 'handicapped', and the Claimant's opportunity to cross-examination and submission being impaired, the finding was flawed."

12. These matters were raised by the Claimant at the start of the full merits hearing and the applications were refused. Reason for the refusal were given orally at the hearing and written reasons have subsequently been provided at the request of the Claimant.
13. Application for amendment, re-hearing and strike-out. The application concluded by requesting amendment of the claim by adding complaints under section 103(A) and section 47B Employment Rights Act 1996, revoking the original judgment, re-hearing the case by a fresh Tribunal and striking out the Respondents' defence.
14. None of these applications have any merit and there are no grounds to grant such applications. It would be contrary to the interests of justice to do so.
15. Decision. There is nothing in the application for reconsideration which is sufficient to cast doubt upon the findings in the judgment and reasons sent to the parties on 7 January 2021. I am not persuaded that there is any new evidence, or any procedural mishap which would justify reconsideration. The application seeks to re-argue matters which were dealt with at the full merits hearing. The interests of justice do not require reconsideration in this case.
16. There is no reasonable prospect of the original decision being varied or revoked on the grounds set out in the application. The application is refused.

I confirm that this is my decision on the Claimant's application for reconsideration in the case of Miss W Yang v Johnson Matthey and Miss Vikki Roberts case no. 3300406/2019 and that I have dated and signed by electronic signature.

Employment Judge Vowles

Date: 11 March 2021

Sent to the parties on:

13.03.2021

J Moossavi

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For the Tribunals Office