



EMPLOYMENT TRIBUNALS

Claimant: Mr Nomahn Riaz Khan

Respondent: Shoosmiths LLP

UPON APPLICATION made by letter dated **15 November 2022** to reconsider the judgment dated **22 August 2022** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing.

JUDGMENT

The judgment is confirmed.

REASONS

1. The claimant made an application for a reconsideration of the Judgment given with reasons made 22 August 2023 (sent the parties on the 8 September 2022 with written reasons sent to the parties on the 2 November 2022). I determined on an initial review there should be a reconsideration of the decision on the grounds set out by the claimant under the heading "**Ground 1 - Misdirection** (a) The basis for hearing".
2. The parties have agreed that there should be a reconsideration by consideration of the paper application and that they do not require a hearing at which the parties attend to be convened.
3. The basis of the request for a reconsideration is set out in the letter dated 15 November 2022. The issue that I have given reconsideration to is whether the hearing should have proceeded at all with a consideration of the respondent's application to strike out the claim. The claimant states that the basis of the hearing on 22 August 2022 was defined by Judge Tobin in his Record of a Preliminary Telephone Hearing on 9 August 2022.
4. Judge Tobin converted the final hearing listed to commence on the 22 August 2022 to a public (open) preliminary hearing to consider whether the matters that he set out at paragraph 7. The claimant states that the respondent's application to strike out the claim on the grounds considered by the Tribunal on the 22 August 2022 was outside the scope of the matters set out by Judge Tobin. The claimant points out that the application was made on 18 August 2022 and that the hearing took place

on 22 August 2022, meaning therefore there was only 2 working days between the making of the application and the consideration of the application.

5. When converting the final merits hearing to a PPH EJ Tobin also stated as follows: “6. So, I am going to vacate the forthcoming 5-day hearing and replace this with a 1-day review hearing. That Open Preliminary Hearing will firstly look at the claims already be made and identify the relevant issues. The parties will need to make relevant submission in advance of this hearing to assist the Judge. As the claimant’s claims look vague, indeterminate and duplicated I will give the Employment Judge the flexibility to strike out all or part of the claims, as appropriate, and parts of the response, if necessary. The hearing judge may then address the behavior of the parties and then go on to make further case management orders as appropriate. I emphasise to the parties they need to cooperate with each other –constructively. This is a requirement of the over-riding objective contained in Rule 2. I give both parties notice the Tribunal will not indulge petty wrangling. We expect representatives to act in a professional manner.”
6. Having reviewed the Tribunal file and considered the parties observations on the issues I am of the view that it was open to me to consider the respondent’s application notwithstanding that it was made in writing on the 18 August 2022. I have come to this conclusion because rule 37 provides that “At any stage of proceeding, either on its own initiative or on the application of a party, a Tribunal may strikeout all or part of a claim or response...”. Rule 37 (2) states that a “A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, wither in writing or, if requested by the party, at a hearing.”
7. I have also noted that the provision of rule 54 which relates to the listing of a preliminary hearing and provides that “in the case of a hearing involving any preliminary issues at least 14 days’ notice shall be given and the notice shall specify the preliminary issues that are to be, or may be decided at the hearing.” Preliminary issue is defined in Rule 53(3).
8. The respondent’s application to strike out the claim was not based on a preliminary issue but required the consideration of the claimant’s conduct and determination whether the conduct fell foul of rule 37 so as to justify the claim being struck out. I am of the view that it was therefore open to me to consider the application to strike out the claim at any time subject to the claimant having a reasonable opportunity to make representations.
9. I have gone on to consider whether the claimant had a reasonable opportunity to make representations. I note that at the hearing of the respondent’s application the claimant was present and was given the opportunity to give evidence and answer the specific points that were raised by the respondent. At the hearing the claimant was represented by Mr Frater, a solicitor. I am satisfied that the claimant did have an opportunity to make representations before I made the decision to strike out the claim.

10. I am of the view that the matters set out at (b) Review of Medical Records, (c) First Opportunity to Correct Any Issues, Ground 2 - Lesser Sanctions, Ground 3- Mr Omar Khan, and Ground 4 CPR do not disclose any grounds for a reconsideration that have a reasonable prospect of the origin, decision being varied or revoked.
11. In the circumstances I am of the view that the decision to strike out the claim should be confirmed.

Employment Judge Gumbiti-Zimuto
19 June 2023

JUDGMENT SENT TO THE PARTIES ON

19 June 2023

GDJ
FOR THE TRIBUNAL OFFICE