EMPLOYMENT TRIBUNALS

Claimant: Ms Julie Churcher

Respondent: Tesco Stores Ltd

JUDGMENT

The Claimant's application dated 7 September 2022 for reconsideration of the Reserved Judgment and Reasons sent to the parties on 26 August 2022 is refused. There is no reasonable prospect of the original decision being varied or revoked.

REASONS

Background

1. In an email dated 7 September 2022, the claimant wrote to the Employment Tribunal requesting a reconsideration of my Judgment on Remedy which was sent to the parties on 26 August 2022. Unfortunately, this did not come to my attention until early January 2023. I instructed the Tribunal's administration to write to the parties allowing the Respondent 14 days within which to respond to the Claimant's application before I decided whether there was a need to determine the matter at a hearing or on the papers. The Tribunal wrote to the parties by letter dated 12 January 2023. The respondent sent a response to the Claimant's application by email letter dated 26 January 2023.

The Tribunal Rules on Reconsideration

2. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

> *"(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.*
> *…*
>
> *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. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:

   a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted.

   b) There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule.

   c) It is not a means by which to have a second bite at the cherry, or is it intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.

   d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

Conclusions

4. Having regard to the circumstances, I determined that a hearing is not necessary in the interests of justice. The claimant's application and the respondent's response are very full and it is possible to deal with this matter on the papers. I have considered both documents in reaching my conclusions.

5. By way of background. The hearing I conducted was to determine remedy, the respondent having conceded liability in respect of the claimant's complaints of unfair dismissal, unauthorised deductions from wages and damages for breach of contract. The claimant was clearly very aggrieved at the way she was treated by the respondents at the time and still was at the hearing. Indeed she believed the hearing was the opportunity for her to raise these matters and found it difficult to focus on remedy. She was clearly dissatisfied that in effect she was denied the opportunity to air her substantive grievances about the way that she had been treated. Whilst I was able to focus her on matters of remedy by and large, there were a number of occasions where she strayed into the substantive matters and also where

she simply and vocally disagreed with my calculation of heads of compensation and would not accept that I was simply applying a formula set out within the Employment Rights Act 1996.

6. The claimant's request for a reconsideration falls broadly into two headings. Firstly, she raises a number of issues to do with the process and preparation of the case and conduct of the hearing. Secondly, she raises concerns about matters of substance which were not matters that I needed to determine and challenges the calculation of the awards that I made.

7. Dealing with the first issue.

8. The claimant complains about a number of issues to do with process and preparation of the case before my involvement in the matter. I was aware of these issues and that, invariably, these arise where one party does not fully comply with the case management orders or does not comply with them on the dates that have been set. Whilst there are potential penalties for not complying, the aim of the Tribunal is not to penalise a party if it is still possible for the hearing to proceed fairly.

9. My view was to move the case forward and rather than focus on who had done or not done what, to focus on whether the case was fully prepared and whether either party was prejudiced, the overriding concern being whether it was possible to have a fair hearing. Having considered these matters, I was content that both parties had the opportunity to consider the documents that were before me, including the counter schedule of loss provided on the day by the respondent, and it was possible to proceed with a fair hearing.

10. I had the paper file of documents previously provided by the claimant consisting of 102 pages. I also had an electronic bundle of documents provided by the respondent running to 246 pages. This was sent to the Tribunal and to the Claimant by email dated 11 May 2020, that is five days before the hearing. This bundle included the claimant's witness statement consisting of 16 pages. Whilst this largely related to liability it did contain some matters relevant to remedy. I also had a copy of the respondent's counter schedule of loss. Although this was provided on the day, it only consisted of 3 pages and the claimant had the opportunity to read it. Thus the claimant had all of the documents and had the opportunity to read them. I took all of these documents into account in reaching my decision.

11. The claimant also complains in essence that the hearing was rushed. I would explain as follows. The case was originally listed before another Employment Judge to start at 10 am. However, at short notice that Judge was indisposed for personal reasons. The case was allocated to me and initially the parties were advised that we would commence at 2 pm. Whilst I was given the case at short notice, this often happens, and I was able to read the file and relevant documents and to assimilate that information before commencing the hearing. As it happened, my morning hearing finished early and my afternoon case was adjourned. So we were able to start at 12.40 pm. As I understand it, Ms Kight, who appeared for the respondent, had already indicated to the Tribunal administration that morning that she would have to

leave the hearing by 4 pm due to a family commitment. Once I was made aware of this, I took the view that rather than losing the hearing date, given the length of time it might be before another hearing date could be given, and given the matters before me, it was best to proceed. I heard the evidence and submissions, I made some findings as to remedy, largely by agreement and I reserved judgment to deal with the compensatory award which involved more consideration by me than there was time for.

12. The second issue that the claimant raises in her application is essentially her disagreement as to a number of matters that go to liability and as to my findings as to remedy. I do not believe it is appropriate or proportionate to respond to these matters in detail.

13. Suffice to say that beyond outline facts as to the Claimant's dates of employment, earnings and other benefits, it was not necessary for me to go into the substantive matters and the Claimant simply disagrees with my findings as to remedy by reference to what she sought and what the respondent put forward in its counter schedule.

14. I should stress that the award of damages for wrongful dismissal was made on the basis of facts and figures that were agreed by both parties. Unless there is some arithmetical error in the sum that I awarded it is not something that it is open to challenge. Similarly with the award of compensation for unauthorised deduction from wages which was also based on facts and figures agreed by the parties.

15. With regard to compensation for unfair dismissal.

16. The basic award is simply the application of various factors to the formula set out within the Employment Rights Act 1996 as set out in my Judgment.

17. The compensatory award was a matter that I dealt with in the reserved part of my judgment. It is again based on the Employment Rights Act 1996 as I indicated in my Judgment. It assessed by reference to certain facts and figures but is essentially down to my assessment as to the appropriate amount of time the award should extend to cover in terms of past loss of earnings and benefits and future loss of earnings and benefits.

18. This involved consideration of attempts made by the Claimant to mitigate her loss. As I indicated in my Judgment, I was not convinced by the Claimant's evidence that she could not find alternative employment sooner. Whilst the claimant has now presented information as to her ability to find alternative employment there is no indication as to why she could not have provided this information at the hearing.

19. Whilst the claimant disagrees with my findings as to whether or not to increase her compensation for the alleged failure to follow the ACAS Code of Practice, I believe it was one I was entitled to reach within the powers available to me. The focus is looking at unreasonable failure to follow the Code and the power to increase (or decrease) compensation by up to 25% is at my discretion. Indeed, the claimant's approach to this in her application would in effect require me to make detailed findings of fact relating to liability

rather than focusing on remedy. On the basis of the evidence before me she simply did not point to any specific failings by the respondent in following the Code.

20. I would add that it is clear from what the claimant states in her application on a number of occasion that she is very aggrieved by the way she has been treated by the respondent. Whilst I can understand why she would feel this, it was not a matter that it was appropriate for me to deal with. My role in dealing with remedy was simply to look at pecuniary losses and not to penalise the respondent for the way that the claimant states she was treated.

21. In conclusion, the claimant's application has no reasonable prospect of success. It is not in the interests of justice to revoke or vary my decision, there is no error in the application of the law and no mistake the way in which compensation is calculated.

Employment Judge Tsamados
14 March 2023