



EMPLOYMENT TRIBUNALS

Claimant Mrs Z Fatima

Respondent Mediscan Diagnostic Services Limited

JUDGMENT on Reconsideration

1. The claimant's application dated 9 May 2023 for reconsideration of the judgment sent to the parties on 25 April 2023 is granted.
2. The claimant's complaints which had been dismissed for non attendance are reinstated.
3. Separate case management orders are made to prepare this case for its final hearing.

REASONS

Relevant Law

1. Rule 70 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.
2. Rule 71 provides that 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 all within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision as necessary.
3. Rule 72 provides that an Employment Judge shall consider any application made under Rule 71. Where practicable the consideration shall be made by the Employment Judge who made the original decision or who chaired the full tribunal which made it. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.
4. At tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly contained within Rule 2 of the

Regulations. This includes ensuring that the parties are an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense.

5. Consideration of whether reconsideration is “necessary in the interests of justice” allows the Tribunal a broad discretion which must be exercised judicially which means having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other party to the litigation, and to the public interest requirement that there should be so far as possible finality in litigation.

Short history of the proceedings

6. The claimant’s claim for direct sex discrimination, pregnancy and maternity discrimination, failure to carry out pregnancy risk assessment, and wrongful dismissal notice pay was brought on 9 January 2021 following early conciliation between 11 November and 12 December 2021. The claimant sued Doctor Ehsan. EJHoward looked at the case and decided that the correct respondent was the limited company.

7. The case then came to a case management hearing before Employment Judge Shotter by telephone on 23 August 2021. Both parties had legal representatives at that hearing. The complaints were clarified and listed for final hearing on 7 December 2022. Clear case management orders were made and a List of Issues attached to the Order. Judge Shotter did not know that the correct respondent was Mediscan Diagnostic Services Limited so her papers were issued in error with Doctor Ehsan still appearing as respondent,

8. The complaints then came before the employment tribunal at a hearing by video on 7 December 2021. It was not the final hearing of the case because neither side was ready. EJAinscough changed the dates for the final hearing and for the case management orders but confirmed that the parties still had to do the work set out by EJShotter to be ready for the final hearing which was to take place over 4 days from 27 June 2022. The respondent then made an application for postponement of that hearing on 15 June 2022 saying that it had not had notice of the hearing. It said that neither party had complied with the orders and that disclosure was underway. The hearing was postponed, an interpreter cancelled and the case relisted for 25 April 2023.

9. On 25 April 2023 neither party attended. The interpreter had to be sent away. The Tribunal file revealed no activity from either party beyond July 2022. Notices of hearing had been served. The case was dismissed under Rule 47 for non attendance.

Application for reconsideration

10. The claimant’s grounds for applying for reconsideration, derived from her letter of 9 May 2023, are:

- a) The claimant had no knowledge of the 25 April 2023 hearing.
- b) No notice of hearing had been received at her address of 21 Aldersleigh Drive.
- c) That the claimant’s representative has mistreated her in not keeping her informed about her case and not responding to requests for information
- d) That the first response the claimant had from her representative who was on record at the Tribunal was on 9 May 2023

e) That the representative has otherwise let the claimant down in failing to file a Schedule of Loss and to comply with case management orders generally

The respondent's position

11. Employment Judge Aspinall wrote to the parties on 11 July 2023 and the claimant's application letter was copied to the respondent who replied on 11 July 2023 stating

The respondent opposes the applicants request to reopen the case. The matter was listed for hearing and the applicant did not attend. This is a waste of public resources.

12. The claimant wrote again dated 18 July 2023 expanding on the grounds for reconsideration to provide detail of a breakdown in relationship with her representative and saying that she had been required to pay outstanding balances before the firm would continue representing her. The claimant also described her financial hardship. and provided her new address. She did not copy that email to the respondent.

Decision to reconsider

I have had regard to the overriding objective to deal fairly and justly with this case. I have had regard to the non attendance of either party and the inactivity on the file from July 2022 to final hearing despite there having been case management orders made by Employment Judge Shotter on 23 August 2021 and Employment Judge Ainscough on 7 December 2021.

I have taken into account the nature of the complaint, discrimination, and the response. The respondent says it did not know the claimant was pregnant when she was selected for redundancy. I have also considered that the claimant has moved house and not informed the Tribunal of her change of address. The claimant's solicitor did not inform the Tribunal that she was no longer instructed.

I consider it would not be in the interests of justice to deny the claimant a chance to have her case heard because she did not attend, was not aware of the hearing date and had not heard from her solicitor about the hearing date in circumstances in which the solicitor had not come off the record at Tribunal.

I have reconsidered my decision to dismiss the claimant's complaint and for the reasons set out above I revoke that decision dated 25 April 2023 and reinstate the claimant's claim.

Employment Judge Aspinall

Date: 10 August 2023

Case No 2400980/2021

JUDGMENT SENT TO THE PARTIES ON

24 August 2023

FOR THE TRIBUNAL OFFICE