



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Saeed

**Respondent:** Reed Specialist Recruitment Limited

**UPON APPLICATION** made by letter dated 7 October 2022 to reconsider the judgment dated 23 September 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing.

## JUDGMENT

The judgment is confirmed.

## Reasons

### Background

1. On 9 March 2022, the claimant presented a claim for arrears of pay and race and religion or belief discrimination in respect of an assignment lasting 16 days from 1 October 2018 to 16 October 2018. Accompanying its amended response, the respondent made an application to strike out the claims on the basis that, the claims having been presented significantly out of time, there was no reasonable prospects of the primary time limits being disapplied.
2. The claimant failed to attend the first case management hearing in the matter before EJ Arullendran and on 22 July 2022, the claimant having failed to comply with an unless order made by EJ Arullendran, her claim was dismissed. Confirmation was sent to the parties on 28 July 2022 ('the First Judgment').
3. In emails dated July and August 2022, the respondent made an application for costs on the grounds that the claimant had no reasonable prospect of success and that she had behaved unreasonably in the bringing and conducting of proceedings.

4. In a judgment dated 23 September 2022 and sent to the parties on 30 September 2022 ('the Second Judgment'), I determined the respondent's application for costs in its favour on both grounds above.
5. In relation to the ground that the claimant behaved unreasonably in the bringing and conducting of the claim, I found that the claimant had essentially abandoned her claim.
6. As to the ground that the claim had no reasonable prospect of success, I considered that on a reading of the claim form and appended documents, the claimant was in possession of the relevant facts to support her claims for race / religion discrimination as well as her claim for arrears of pay at the relevant time and, furthermore, she had made a conscious decision to delay issuing proceedings. The claim was presented over 3 years after the expiry of the primary time limit for both causes of action. At paragraph 20 of the judgment, I concluded that there was no reasonable prospect of the claimant persuading the Tribunal to disapply the applicable primary time limits.

### **Application for Reconsideration**

7. The claimant wrote to the Tribunal on 7 October 2022 in which correspondence, she asked for the costs order to be cancelled and the hearing to be relisted. The claimant stated that she had suffered severe trauma due to the loss of her father and that she had been in Pakistan since May 2022. Although the claimant did not explicitly make a request, the Tribunal accepted the claimant's correspondence dated 7 October 2023, as an application for reconsideration of both judgments.
8. An application for reconsideration under rule 70 must be made within 14 days of the date on which the decision was sent to the parties.
9. The application in respect of the First Judgment was made significantly out of time, and on 18 May 2023, the parties were sent a judgment in which EJ Arullendran refusing the claimant's application for reconsideration / relief from sanctions from the effect of the unless order, for that reason.
10. The Second Judgment, however, was made within the relevant time limit and so it was considered.
11. There is a single ground upon which a judgment can be reconsidered, that being that it is in the interests of justice to do so; rule 70. If it is reconsidered, a judgment can be confirmed, varied or revoked.
12. In her application, as well as several items of subsequent correspondence, the claimant contended that she had suffered bereavement on 10 May 2022, requiring her to leave the country and that her mental state was such

that she could not engage with the Tribunal or the respondent. A fit note of the claimant's GP, Dr Kent, dated 17 November 2022 stated that the claimant had suffered a severe grief reaction and that she was out of the country from 11 May 2022 until 1 October 2022 and therefore was unable to attend court hearings.

13. An initial consideration was carried out pursuant to rule 72(1). On 18 May 2023, the parties were informed that I had determined that it could not be said that the application had '*no reasonable prospect*' of the Second Judgment being varied or revoked. In arriving at that conclusion, I took into account the medical evidence relied upon by the claimant, observing that it was not inconsistent with the possibility that the claimant's mental health was the barrier to her engaging with correspondence from the respondent and the Tribunal about the costs application and that had she been able to engage, she may have been in a position to explain why an order should not have been made on the basis that her claims had no reasonable prospect of success. The determination sent to the parties reminded the parties that the claimant's application did not address the alternative ground for making the costs order, i.e. that her claims had any prospect of success.
14. The parties' views as to whether a hearing was required were sought; neither objected to a determination without a hearing.
15. On 27 June 2023, and pursuant to rule 72(3) the Tribunal wrote to the parties informing them of my decision that a hearing was not necessary and informing them that they were permitted to make further representations by 11 July 2023.
16. On 28 June 2023, the respondent wrote to the Tribunal observing that the medical evidence was such that it did not support the claimant's contention that her mental health was in such a state that it prevented her from communicating about her claim at all. It also observed that the claimant has made no representations about why her claims had any prospect of success which, it noted, was '*in itself enough to justify a costs order*'.
17. On 10 July 2022, the claimant again wrote to the Tribunal attaching two letters from a Professor Kamran, Professor of Surgery, based in Lahore, advising of bed rest and her unfitness to work from June to August 2022, a further copy of the fit note from Dr Kent previously sent to the Tribunal, a letter written by Dr Kent dated 25 May 2023 and the claimant's written submissions.
18. In the letter, Dr Kent stated that the claimant was seen in October 2022 when she presented with a serious bereavement reaction, requiring treatment. Dr Kent confirmed that the claimant was '*unable to attend to her legal and financial matters between May and October [2022] due to her absence from the country and poor mental health*'.

19. In her written submission, the claimant contends that *'justice should not be time bound'* or else *'justice could never be served'*. She made reference to s.33 Limitation Act 1980 as well as, what I understand to be, a reference to the ability of the police to reopen criminal investigations decades after they were closed.

## Discussion and Conclusion

20. Taking into account the medical evidence, I am satisfied that the claimant did not behave unreasonably in failing to engage with the litigation process. However, that is not an end to the matter, since the Second Judgment was based on a further ground, that there were no reasonable prospects of the primary time limits being disapplied.
21. Time limits are jurisdictional in nature. The starting point is that they must be complied with. The reasonably practicable test contained in the Employment Rights Act 1996 is a relatively strict one. The just and equitable extension found in the Equality Act 2010 gives the Tribunal a relatively wide discretion, but nevertheless, there is no presumption in favour of claimants, rather the reverse is true; a Tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time: Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 CA.
22. Although the power to reconsider a judgment is a broad discretion, it is one that must be exercised judicially. As with any power under the Tribunal Rules of Procedure, judges must seek to give effect to the overriding objective when exercising their discretion. Regard must be had not only to the applicant, but also to the other party to the litigation. Furthermore, a central aspect of the interests of justice is that there is, so far as possible, finality of litigation. A reconsideration is not an opportunity for the applicant to have a second bite of the cherry, without there being some compelling reason, and nor is it an opportunity for a Tribunal to review and amend its original decision if it has changed its mind; recently affirmed in Ebury Partners UK Ltd v Davies [2023] EAT 40.
23. The claimant has not only been given an opportunity to have the Second Judgment reconsidered, but in doing her attention has been specifically directed to the finding that the claims had no reasonable prospects of success.
24. On any view, the claimant had a hurdle of considerable magnitude to overcome, being that her claims had been presented over 3 years outside the expiry of the primary time limit. The claims arose out of an assignment that lasted only 18 days; the contents of the claim form suggests that the claimant was in possession of the relevant facts giving rise to her claim, but

chose to delay the presentation of those claims. These are compelling facts that might suggest that a Tribunal seized of them would conclude that it had no jurisdiction to entertain them.

25. It is not enough to simply state that justice would be served by acceding to the application or that there exists a legal basis to disapply a primary time limit. Statutory time limits go the Tribunal's power to consider the claim/s at all; they must be applied unless the claimant can persuade the Tribunal that any extension satisfies the relevant statutory test. The claimant has not provided, at any stage, any compelling ground as to why she had a reasonable chance of persuading a Tribunal to extend the primary time limit so that her claims had been presented in time, or why the discretion should not have been exercised to make the costs order.
26. There is no compelling basis to revoke or vary the Second Judgment.

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Employment Judge Jeram

12 September 2023