



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Needham

Respondent: 1850 Business Solutions Ltd

JUDGMENT

The Claimant's application, dated 2 September 2023, for reconsideration of the Judgment, signed on 30 August 2023 and sent to the parties on 5 September 2023, is refused.

REASONS

1. The Claimant's email of 2 September 2023, was sent in response to a letter from the Tribunal dated 18 August 2023, noting that she was pursuing a claim of unfair dismissal, but did not appear to have the period of two years' continuous service, required by section 108 of the Employment Rights Act 1996 ("ERA"), to be eligible to pursue such a claim. The letter gave the Claimant until 25 August 2023 to give reasons in writing as to why her unfair dismissal claim should not be struck out.
2. The Claimant did not reply within the stipulated time, and therefore I signed a Judgment striking out the unfair dismissal claim on 30 August 2023. That Judgment was then sent to the parties on 5 September 2023. As it had been signed prior to the Claimant's letter, I treated that as an application for reconsideration of my Judgment.

Issues and Law

3. Rule 70 of the Employment Tribunals Rules of Procedure ("Rules") provides that reconsideration of a judgment will take place where the Employment Judge considers that it is necessary in the interests of justice to do so.
4. Rule 1(1) provides that a "judgment" is, "*a decision, made at any stage of the proceedings..., which finally determines –*
 - (i) *a claim, or part of a claim, as regards liability, remedy or costs...;*

- (ii) *any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);...*"
5. Rule 71 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record was sent to the parties, or within 14 days of the date that the written reasons were sent (if later), and should explain why reconsideration is necessary. The Claimant's application satisfied those requirements.
 6. Rule 72(1) notes that an Employment Judge shall consider any application for reconsideration made under rule 71, and that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked then the application shall be refused and the Tribunal shall inform the parties of the refusal. Alternatively, rule 72 sets out the process that is then to be followed for further consideration of the application.
 7. Rule 72(3) provides that, where practicable, the consideration under Rule 72(1) shall be by the Employment Judge who made the original decision.

The Application

8. The Claimant's reconsideration application related to my decision that her unfair dismissal claim should be struck out, as she had failed to make representations in writing as to why it should not be struck out. In her email, the Claimant set out three paragraphs setting out what she contended had been treatment from the Respondent in March 2023, which had been unfair and discriminatory, and which had triggered her resignation on 3 March 2023,. She then, in a fourth paragraph, set out that she had only been slightly short of the required two years' continuous service, some 27 days in fact, and some 20 days if her notice period was factored in.

Conclusions

9. Section 108 ERA provides that the right to pursue an unfair dismissal claim does not apply unless the claimant has been continuously employed for a period of not less than two years ending with the effective date of termination. There is no discretion to allow a claim to proceed where the period of service is close to the required two-year period. The Claimant was clearly short of the required period of continuous service.
10. Sections 98B to 104G ERA do provide for a claimant to be eligible to pursue an unfair dismissal claim without any required period of service, but they apply only in specific limited circumstances. Nothing in the Claimant's email of 2 September 2023 gave any indication that she was asserting that any of sections 98B to 104G ERA applied to her.
11. Overall therefore, I did not consider that there was any reasonable prospect of the original decision being varied or revoked. I therefore refused the reconsideration application.

Employment Judge S Jenkins
Date: 3 October 2023

JUDGMENT SENT TO THE PARTIES ON 16 October 2023

FOR THE TRIBUNAL OFFICE Mr N Roche