



EMPLOYMENT TRIBUNALS

Claimant: T Mtshali

Respondent Bolton Foundation NHS Trust

JUDGMENT ON A RECONSIDERATION

The claimant's application dated 21 September 2023 for reconsideration of the Judgment sent to the parties on 7 August 2023 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. I have considered the claimant's application for reconsideration of the Judgment, signed by me, striking out her 4 remaining allegations of race discrimination for failure to pay a deposit as ordered. The application was emailed by the claimant and received by the Tribunal on 21 September 2023. It consists of 6 lines of tightly typed submissions. I have taken the contents of the application into account.

Rules of Procedure

2. Rule 71 provides that an application for reconsideration shall be presented in writing and copied to all other parties within 14 days of the date on which the Judgment was sent out.

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.
4. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could have a material bearing on the outcome.
5. Rule 39 empowers the Tribunal to make an order requiring a party to pay a deposit not exceeding £1,000.00 as a condition of continuing to advance an allegation which the Tribunal considers has little reasonable prospects of success. A date for payment is specified in the deposit order.
6. Rule 39(4) provides that if the paying party fails to pay the deposit by the date specified in the order, the allegation to which the deposit relates shall be struck out.

Relevant facts

7. The claimant was ordered to pay a deposit of £60.00 for each of 4 allegations pursuant to a deposit order made by the Tribunal at a preliminary hearing on 14 July 2023. The deposit order was sent to the claimant on 18 July 2023. The date specified for payment was by no later than 4pm on 11 August 2023.
8. On 14 August 2023 at 12:58, the Tribunal's finance centre confirmed to the Manchester Employment Tribunal that a payment had been received from the claimant that day.
9. There is no record of any prior or further contact by the claimant with the Tribunal or the finance centre in an effort to pay the deposit until her application.
10. The Judgment striking out the claim for striking out the claimant's 4 remaining allegations of race discrimination for failure to pay a deposit as ordered was sent to the parties on 7 August 2023.
11. The claimant's application for reconsideration was made and received by the Tribunal on 21 September 2023.

The application

12. The application was not made within 14 days of the date on which the Judgment was sent to the parties. It was made 45 days after the date on which the Judgement was sent to the parties, and it was not copied to the respondent. The claimant's application does not therefore comply with Rules 71 or 92 in any event.
13. The claimant's application for reconsideration states that she had attempted to pay the deposit ordered on the last day (11 August 2023) by sending postal orders, which the claimant contended amounted to the deposit order being paid on time. I disagree with that contention because, even if the postal orders had been sent, they had not by then been 'received' by the Tribunal due to the time required for postal delivery and so there were no "cleared funds" in the Tribunal's bank account. When the deposit order was sent to the claimant, it was accompanied by notes issued by the Tribunal to further explain how to pay and what the deadline means. In particular, these make clear that the deposit must be paid by no later than the date specified in the order. By her own admission, the claimant has not done so.
14. In addition, the claimant refers in her application to a family bereavement and the fact that she is currently in South Africa and does not know when she will return to the UK. The claimant suggests that she sent an email on 18 August 2023 mentioning that she was out of the country until October 2023. Despite extensive enquiries, the Tribunal has been unable to locate any such communication from the claimant. No evidence to support or explain matters has been supplied. In any event, whilst I have sympathy for the claimant's loss, I respectfully consider that such matters can have no bearing on this reconsideration.
15. The claimant was given over 3 weeks in which to pay the deposit as ordered. However, she had been aware of the deposit order from as early as 14 July 2023 when she was represented by a solicitor at the case management preliminary hearing before Employment Judge Horne, who made the order and explained matters to the claimant.
16. In the above circumstances, I am satisfied that the Tribunal has acted correctly in accordance with Rule 39. The claimant failed to pay the deposit order by the date specified and the allegations to which it relates have been struck out. In those circumstances, the Tribunal has no discretion about the matter. Further, the claimant has given no valid reason why I should revisit the strike-out under the Tribunal's general powers to vary suspend or set aside the decision.

Conclusion

17. Having considered all the points made by the claimant I am satisfied that there are no grounds to revoke the strike-out Judgment. The application for reconsideration is refused.

Employment Judge Batten
Date: 27 October 2023

JUDGMENT SENT TO THE PARTIES ON:

3 November 2023

FOR THE TRIBUNAL OFFICE