



EMPLOYMENT TRIBUNALS

Claimant:
Mr Y Elklai

v

Respondent:
Secretary of State
for Justice

Heard at: Reading (by CVP)

On: 8 December 2023

Before: Employment Judge Hawksworth

Appearances

For the claimant: No attendance or representation

For the respondent: Mr M Paulin (counsel)

JUDGMENT (RECONSIDERATION)

Employment Tribunals Rules of Procedure 2013 – rules 70 to 73

The claimant's application for reconsideration of the judgment sent to the parties on 7 September 2023 is refused under rule 72(1).

REASONS

1. The claimant was employed by the respondent from 27 June 2022 to 10 January 2023. Early conciliation started on 25 January 2023 and ended on 1 March 2023. The claim form was presented on 28 March 2023. The claimant brought complaints of unfair dismissal, sex discrimination and for arrears of pay.
2. On 18 April 2023 the tribunal wrote to the claimant to say that it was considering striking out his complaint of unfair dismissal, because he had not been employed for two years. Being employed for two years is a legal requirement for someone to bring a complaint of 'ordinary' unfair dismissal.
3. The claimant did not reply and the complaint of unfair dismissal was struck out by Employment Judge R Lewis in a judgment sent to the parties on 7 September 2023.
4. In response to the judgment, the claimant sent a request for reconsideration on 19 September 2023. His request has 18 pages and mostly takes the form of a chronology of events. At the start of the request, the claimant says that he understands that two years of service is needed for a complaint of unfair

dismissal, however, he believes that his claim for unfair dismissal is legally justified because 'it is pertaining towards unlawful discrimination'.

5. I have been appointed by Regional Employment Judge Foxwell under rule 72(3) to consider the reconsideration request because it is not practicable for it to be considered by EJ Lewis.
6. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I must decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. I have considered the claimant's application with this test in mind.
7. I have concluded that there is no reasonable prospect of the judgment being revoked or varied. This is because the claimant does not have the two years' service required by section 108 of the Employment Rights Act 1996 to bring a claim of 'ordinary' unfair dismissal.
8. There is nothing in the claimant's request for reconsideration which suggests that he has grounds to bring a complaint of 'automatic' unfair dismissal.
9. A complaint that a dismissal is discriminatory is brought as a complaint of discrimination under the Equality Act 2010 (not as a complaint of unfair dismissal). A complaint of discriminatory dismissal is not affected by this judgment and can (if it was included in the claimant's claim form) be brought as part of the claimant's complaint of sex discrimination which is continuing.

Employment Judge Hawksworth

Date: 8 December 2023

Sent to the parties on:
15 December 2023

For the Tribunal Office

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