EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000075/2022

Reconsidered on 12 December 2023

Employment Judge Cowen

Ms S Gaikniece **Claimant**

CCHG Limited (trading as VPZ) **Respondent**

UPON APPLICATION made by letter dated ***18 May 2023*** *and submissions made* ***1 November 2023*** to reconsider the judgment *sent on* ***3 May 2023*** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. Judgment made on 26 April 2023 shall remain.

REASONS

1. The Respondent applied for reconsideration of the judgment of the Tribunal that the Claimant was automatically unfairly dismissed due to her pregnancy/maternity leave (s.99 ERA 1996), discriminated under s.18 Equality Act 2010 and subject to a breach of contract.

2. Judgment was given to the Claimant on 26 April 2023 at a hearing by CVP which the Claimant attended in person and gave her evidence on affirmation, questions were asked by me and I gave an oral judgment addressing each of her claims. The Respondent did not attend and was not represented, having not filed an ET3.

3. The Respondent's application for reconsideration is based on the fact that the Respondent's own HR Manager had failed to inform the other senior managers of the business, of the claim and had then failed to respond to it, or to arrange any representation for the company throughout the tribunal process.

4. The Respondent now acknowledges that they were aware of the potential claim via the ACAS Early Conciliation process, but did not know that a claim had been issued. They assert that it was not until 18 May 2023 that they became aware of the judgment and upon investigation found that the HR Manager had engaged in correspondence with the Tribunal in respect of an extension of time to lodge an ET3 which was not allowed. The same HR Manager had also engaged in communication with ACAS with regard to the claim in January and April 2023.

5. There is no evidence that the Respondent took any further action with regard to defending the claim until the application for reconsideration on 18 May 2023.

6. The Respondent's assertion is that the HR Manager covered up the existence of this claim from the other senior managers in the business. On that basis they draw analogy with cases where paid representatives have, due to their willful actions or negligence, failed to ensure that their client is heard by the Tribunal at a hearing. The Respondent now requests that the judgment is set aside and the Respondent is now allowed to defend the claim which should be re-heard.

7. The Claimant was asked for her view of the reconsideration application and she responded on 29 July 2023 in which she objected to the Respondent's application on the basis that there had been finality to the litigation and that to re-open it would cause her further stress and anxiety.

8. The law on reconsideration at rule 70 Employment Tribunal Rules of Procedure 2013 indicates that the ET must be satisfied that it is 'necessary in the interests of justice' in order to allow reconsideration to occur. It is therefore the exception rather than the rule that reconsideration should be allowed and a judgment set aside.

9. In considering whether to allow such an application the Tribunal must consider the prejudice to both sides in allowing, or not allowing the application. It must also consider the public interest of finality to litigation.

10. I have noted the case of Lindsay v Ironside Ray and Vials [1994] ICR 384 and Phipps v Priory Education Service Ltd [2023] EWCA Civ 652. Lindsay notes that the failings of a representative are not usually grounds for a reconsideration. Whereas Phipps sets out a caution to consider whether the representative can be pursued in other litigation for the work done.

11. In this case, the circumstances are not of a representative who is paid (or even unpaid) to act on behalf of the company. The correspondence of the HR Manager was that of the company itself, as the HR Manager was writing as the person with authority within the company.

12. The HR Manager was aware of the case as she did correspond with the Tribunal and with ACAS. It is not therefore the case that no action was taken on behalf of the Respondent because they were not informed or not aware of the proceedings. They (in the form of HR Manager) chose to stop engaging with the proceedings.

13. There was no error on the part of the Tribunal administration in this case, who had informed the Respondent via the appropriate address of the progress of the case.

14. I therefore do not consider that this is a case which is within the same scope as Lindsay or indeed Phipps, as a representative of the company was not at fault in this case, but the company itself. The failure to engage with the proceedings is due to an internal issue within the Respondent and not due to any external adviser. The assertion by the Respondent that they were not implicated in the misconduct of the HR Manager is an attempt to assert that there was no vicarious liability for her actions. No evidence or detailed submission of such has been provided to me and I am not prepared to accept such a vague assertion.

15. In considering whether it is necessary in the interests of justice to reconsider the judgment and set it aside, I consider that to do so would open up a litigation which was deeply stressful for the Claimant whilst she was pregnant and soon after the birth of her child. Her evidence has been heard by the Tribunal and accepted and to reopen the case would be to set aside her evidence, for which there appears to be no sufficient reason to do so.

16. The prejudice to the Respondent in not setting aside the judgment is that they are left with the judgment of the Tribunal which they failed to engage with. It cannot be the intention of the legislation to allow a Respondent who has had an internal problem with administration, to unpick a Judgment against them. Whether the Respondent has another way in which to pursue their loss is a matter for them and not a matter which can influence the interests of justice in this case.

17. I therefore conclude that it would not be necessary in the interests of justice to set aside this judgment. Public interest requires that there should be finality to litigation and the re-opening of this case would not serve that interest.

Employment Judge: **S Cowen**
Date of Judgment: **12 December 2023**
Date sent to parties: **15 December 2023**