



EMPLOYMENT TRIBUNALS

Claimant: Miss L Smith

Respondent: Dance Attack Collection Limited

UPON APPLICATION made by email dated 13 December 2023 to reconsider the judgment dated 13 December 2023 (“Judgment”) under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing:

JUDGMENT

The Judgment is revoked, and the Claimant’s claim of unfair dismissal, pursued by reference to section 104 of the Employment Rights Act 1996 (“Act”), shall be permitted to proceed together with her other claims.

REASONS

Background

1. The Judgment was issued on the basis that the Claimant had failed to reply to a direction from the Tribunal to confirm the basis of her unfair dismissal claim. It was noted that she did not have two years’ service but it could be that she was bringing her claim by reference to section 104 of the Act, i.e. that her dismissal was on the ground that she had asserted a statutory right. The direction was issued on 27 November 2023, and the Claimant was given seven days to reply, i.e. until 4 December 2023.
2. On the understanding that the Claimant had not replied, the file was referred to me, and I issued the Judgment, dismissing the unfair dismissal claim. On receipt of the Judgment however, the Claimant emailed the Tribunal, noting that she had, in fact, emailed the Tribunal on 3 December 2023, confirming that she was pursuing her claim by reference to section 104 of the Act, contending that she had made requests for her wages to be paid and for payslips to be provided, and that she felt that she had been dismissed because of those requests. That email was located, and it was noted that the Claimant had made a slight error in the case number, which had led to it not being matched with her file.
3. In the circumstances, I directed, in a letter dated 18 December 2023, that the Claimant’s email of 13 December 2023 should be treated as an application for reconsideration of the Judgment, and that my provisional view was that the application should proceed. I directed that I would consider the matter without a hearing, and gave the parties until 22

December 2023 to set out their views on whether the application should be granted or not.

4. The Claimant replied on 20 December 2023 reaffirming her view that her unfair dismissal claim should be allowed to proceed. The Respondent replied, albeit later than the date specified, on 3 January 2024, noting that it vehemently opposed the Claimant's reconsideration application, but without providing any explanation for that opposition, other than to note that the particular claim had been rejected and that the Respondent denied it.

Law

5. Rule 71 of the Employment Tribunals Rules of Procedure ("Rules") 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 and should explain why reconsideration is necessary. The Claimant's email satisfied the requirements of rule 71 and therefore a valid application for reconsideration had been made.
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 70 specifies only one ground for reconsideration; namely where it is necessary in the interests of justice.

Conclusions

8. It was clear to me that the Claimant had responded to the Tribunal's original direction within the specified time frame, albeit that it had not been brought to my attention due to the Claimant's error in recording the case number. In that response, the Claimant had confirmed the basis of her unfair dismissal claim, which is one that is capable of being pursued regardless of the period of continuous service.
9. In the circumstances, I did not consider that the interests of justice would be served by maintaining the Judgment dismissing the unfair dismissal claim, and therefore concluded that the Judgment should be revoked.
10. The Claimant's unfair dismissal claim will therefore proceed to be considered alongside her other claims by reference to the evidence in the case.

Employment Judge S Jenkins
Date: 4 January 2024

JUDGMENT SENT TO THE PARTIES ON 8 January 2024

FOR THE TRIBUNAL OFFICE Mr N Roche