



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MS R WAIYEGO

AND

Respondent
FIRST GREATER WESTERN LTD
(R1)
MR DARYN MCCOMBE (R2)
MS RUTH BUSBY (R3)
MR BARY MILSOM (R4)
MS JEMMA HANCOCK (R5)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 8TH DECEMBER 2023

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- WRITTEN SUBMISSIONS

FOR THE RESPONDENT:-

RECONSIDERATION JUDGMENT

The judgment of the tribunal is that:-

The claimant's application that the Preliminary Hearing Judgment be varied or revoked is dismissed.

REASONS

1. On 2nd October 2023 I heard a preliminary hearing at which I gave the following Judgment :
 - i) The claimant has conducted the litigation unreasonably within the meaning of r37(1)(b) Employment Tribunal (Constitution and Rules of Procedure) Regs 2013;
 - ii) As a fair trial is still possible and/or as it is not proportionate to strike out the claim the respondents application to strikeout the claim is dismissed;
 - iii) The claimant’s application to strikeout the response is dismissed;
 - iv) The claimant’s application to amend her claim to pursue allegations of harassment pursuant to s26 Equality Act 2010is dismissed.
2. The claimant has sought reconsideration of :
 - i) The decision not to permit her application to amend to add a claim of harassment.
 - ii) The conclusion that she had conducted the litigation unreasonably within the meaning of r37(1)(b).
 - iii) The dismissal of her application to strike out the response;
 - iv) The case management decision that the List of Issues as agreed at the hearing on 9th December 2022 (before REJ Pirani) subject subsequent agreed amendments should stand as the List of Issues in the case.
 - v) The claimants application for costs.

Amendment Application – Harassment

3. Central to the claimant’s application for reconsideration of the amendment application is the issue of the agreement or otherwise of the List of Issues at the hearing before REJ Pirani on 9th December 2022 (see PH Judgment para 13).
4. That List of Issues was amended by REJ Pirani in accordance with a number of points raised by the claimant on 6th January 2023 (PH Judgment para 17). He also gave further directions as to the amendment application, which was finally dealt at the hearing on 2nd October 2023 by me (PH Judgment paras 44-48.) .
5. The claimant’s reconsideration application does not engage with the reasoning of the PH judgment but refers back to her earlier correspondence of 6th January

2023, and 28th February 2023. Essentially she contends that as she has not yet received full disclosure from the respondent and/or that she is entitled as of right to amend her claim having notified the tribunal of her intention to do so on 6th January 2023.

6. There is nothing new in the reconsideration application that was not already before me, and I re-iterate that it does not engage with the reasoning for the decision. In the circumstances there is no basis for revoking or varying the decision.

Rule 37(1)(b)

7. The claimant submits that the tribunal has failed to explain the basis for the conclusion that she had acted unreasonably. The basis of the decision is set out at paras 20 – 32 of the PH judgment. The assertion that the reasoning is not explained is plainly incorrect, and there is no other basis set out for reconsidering the decision. In the circumstances there is no basis for revoking or varying the decision.
8. Bundle – As is set out in the PH Judgment (para 29) one of the matters relied on by the respondent as unreasonable conduct was the claimant’s denial that she had received a hard copy of the bundle, which the respondent contended was untrue, although the claimant maintained that she had not received it. I was not in a position to make any finding of fact about this dispute and it was not the basis of the decision. However the claimant re-iterates in the reconsideration application that she did not receive the bundle. Since the hearing the respondent has sent further evidence apparently from the claimant’s landlady demonstrating that the parcel had been outside the claimant’s front door since the end of July. If correct it demonstrably was delivered and received by the claimant. Although it did not form part of the original decision the evidence would appear to suggest the claimant has persistently lied about the non-receipt of the bundle.
9. As it did not form part of my original decision I have not attempted to reconsider any alternative findings in the light of the new evidence in relation to the claimant’s reconsideration application.

Application to Strike Out Response

10. The basis of my decision to reject this application is set out at paras 39-43 of the PH judgment. The reconsideration application simply repeats matters already before me and does not engage with the reasoning. In the circumstances there is no basis for varying or revoking the decision.

Case Management Decision in respect of the List of Issues

11. This appears to be a reference to para 38 (i) PH Judgment. As this is point I have taken into account in the claimant’s favour to determine that I would not accede to the respondent’s strike out application, the claimant’s application that I should

reconsider it is difficult to understand. In any event there is nothing in the reconsideration application that would cause me to vary or revoke the decision.

Claimant's Costs Application

12. As neither I nor REJ Pirani who was previously dealing with this claim have identified any unreasonable behaviour on the part of the respondents there is no basis for making a preparation time order in the claimant's favour. For the avoidance of doubt the basis of the costs application is the same as that for the application to strike out the response which was dismissed for the reasons set out at para 39-43 PH Judgment. Unless and until there is any factual finding made that that the respondent has deliberately lied in its response to the tribunal and/or any evidence that is given, which in either case could only be made at the final hearing, the factual basis for making a preparation time order has necessarily not been established.

13. For the reasons given above there is not in my judgement any basis for varying or revoking any of the decisions / orders made at the Preliminary Hearing.

Employment Judge Cadney
Dated: 08 December 2023

Judgment sent to the parties on 04 January 2024

For the Tribunal Office