



EMPLOYMENT TRIBUNALS

Claimant: Mr P Ayalew Tamiru
Respondent: Tiffany & Co. (UK) Holdings Limited

JUDGMENT

1. The application for reconsideration is refused because there is no reasonable prospect of the original decision being varied or revoked.
2. The claimant's claims for bonus pay and notice pay are struck out.

REASONS

1. On 16 February 2023 I made a deposit orders of £50 as conditions of the claimant pursuing his complaints of bonus pay notice pay respectively. The order provided for the deposit orders to be paid within 21 days of the date the order was sent. The order was sent on 3 March 2023. The claimant did not pay the deposit orders by 25 March 2023 or at all.
2. On the same date, 16 February 2023, I made orders striking out the claimant's claims for unfair dismissal and redundancy pay for want of jurisdiction and an unless order in respect of the claimant's claim for bonus pay and notice pay requiring him to provide further and better particulars within 21 days of the date the order being sent. The claimant did not comply with the terms of the unless order by 25 March 2023 or at all.
3. In a letter to the tribunal dated 22 March 2023, but not forwarded to me by the tribunal office until 22 June 2023, the claimant expressed his disappointment in the orders of tribunal and stated that he believed the decision to be unfair. Although the claimant did not explicitly ask for a reconsideration I have treated the claimant's letter to the tribunal as an application for reconsideration.

The Law

4. Rules 70 Tribunal Rules provides as follows:

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

5. Rule 72 provides:

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

6. Under Rule 72(1) I may refuse an application based on a preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

7. I also take into account the Overriding Objective as set out below

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a)ensuring that the parties are on an equal footing;
- (b)dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c)avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d)avoiding delay, so far as compatible with proper consideration of the issues; and
- (e)saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall cooperate generally with each other and with the Tribunal.

Conclusions

The deposit orders

8. The reasons provided on 16 February 2023 identified the evidential difficulties the claimant faced in his complaints in respect of bonus pay and notice pay.
9. In respect of bonus pay the tribunal identified that the claimant's employment contract contained conditions attached to the eligibility for bonus for bonus pay including that the claimant had to be in employment and not in his notice period at the time of payment and that the bonus pay was contingent on the claimant remaining in employment with the company until the end of the fiscal year. It also stated that the bonus was discretionary.
10. In respect of notice pay the tribunal identified that the correspondence before it at the hearing indicated that the claimant had worked out part of his notice period and then was released from the remainder of it receiving pay for that period. The tribunal identified that it was difficult to see how the claimant could be entitled to notice pay in those circumstances.
11. The claimant's letter of 3 March 2023 reasserts that he was entitled to 3 months' pay from the respondent upon termination of his contract and moreover that he was entitled to a bonus upon termination of his contract. He states that the issues he has presented at the hearing were 'very straightforward and based on facts'. The claimant does not seek to address any of the difficulties that were raised within my reserved judgment in which I concluded that the claimant's complaints in respect of bonus and notice pay had little reasonable prospect of success. Accordingly I remain of the view that the claimant's complaints have little reasonable prospect of success.
12. Within his letter the claimant states that he cannot afford to pay the deposit order. Enquiries were made of the claimant's means at the hearing in November 2022. The claimant was not forthcoming with information about his finances beyond identifying that he could not afford to pay a deposit order of £1,000 as sought at the hearing by the respondent. I took into account the information available as to the claimant's ability to comply with the order when fixing the amount of the deposit.
13. I conclude that that in all the circumstances there is no reasonable prospect of the original decision being varied or revoked.
14. The claimant has failed to pay the deposits ordered. The claims for bonus pay and notice pay are struck out under Rule 39(4) of the Employment Tribunal Rules.

Strike Out

15. In my judgment of 16 February 2023 I struck out the claimant's claims for unfair dismissal and redundancy pay for want of jurisdiction. The claimant did not on his own case have the requisite qualifying service in order to make those claims and did not advance that his case fell within any of the exceptions under section 108 ERA.
16. The claimant's letter dated 3 March 2023 similarly did not advance that he falls within one of the exceptions or give any reason as to why his claims for unfair dismissal and redundancy pay should not have been struck out.
17. I conclude that that in all the circumstances there is no reasonable prospect of the original decision being varied or revoked.

Unless Order

18. The tribunal identified the evidential difficulties in respect of the claimant's claims for bonus and notice pay as set out above. The claimant did not avail himself of the opportunity to address those difficulties by providing further and better particulars as directed. It remains the case that these claims have little prospect of success. In the circumstances I am confident that there was a proper basis for doubting the likelihood that the claimant could establish the facts essential to his claim and the claimant's failure to address the evidential difficulties leads me to the same conclusion upon reconsideration. I conclude that that in all the circumstances there is no reasonable prospect of the original decision being varied or revoked.

 C. Kumar

Employment Judge **Kumar**
08 January 2024