



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr Michael Hawkins

AND

Respondent
Dorset Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON 26 January 2024

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the judgment with reserved reasons dated 2 January 2024 which was sent to the parties on 15 January 2024 ("the Judgment"). The grounds are set out in his letter dated 22 January 2024. That letter was received at the tribunal office on 22 January 2024.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. In this case the claimant was unable to connect to the remote hearing following which the Judgment determined that the claimant's claim for unfair dismissal was some 15 months out of time; but that the claimant's claim for entitlement to a statutory redundancy payment was not out of time and could continue. At the end of the Judgment at paragraph 40 I set out the following: "This decision has been taken in the absence of the claimant who do not attend this hearing, apparently through no fault of his own. He is entitled to seek reconsideration of this Judgment in accordance with Rule 70. Any such application must be made in writing within 14 days from date this Judgment is sent to the parties, and must be copied to the respondent, in accordance with Rule 71. However, given the significant delay in issuing the unfair dismissal claim the claimant must ensure that any such application addresses the following points: (i) in circumstances where the claimant had access to advice and support from his trade union and was clearly aware of the procedure for presenting proceedings because he had commenced the Early Conciliation process, exactly why the claimant asserts that it was not reasonably practicable for him to have presented these proceedings before the extended time limit which expired on 31 January 2022; and (ii) even if in those circumstances it was not reasonably practicable to have presented these proceedings before that time, exactly why he then goes on to assert that it was not reasonable for him to have presented these proceedings until after the expiry of a further 15 months on 1 May 2023."
5. The grounds relied upon by the claimant are in summary these: (i) the claimant was not a member of a trade union at the time of his dismissal and only had limited access to advice; (ii) he did not submit the claim form until 1 May 2023 because he feared for his job prospects, career, pension and future; (iii) he was in regular correspondence with the respondent's representative and applied for alternative positions; (iv) communication was difficult because of the Covid pandemic; (v) he tried and hoped that the settlement could be reached without the need for tribunal proceedings; (vi) the claimant was aware that there were time limits within which to submit claims but did not know how strict these were or what exceptions might apply; (vii) ACAS were notified within the required timeframe and an Early Conciliation certificate was issued within the required timeframe; (viii) he was not offered any of the positions for which he applied; (ix) it was only then that he says it was reasonable to conclude that the respondent would not offer him an alternative position.
6. It is clear to me from the claimant's original statement, and the above grounds seeking reconsideration, that the claimant had access to advice and support at the time of his dismissal and well within the relevant time limits. He was aware of the need to obtain an Early Conciliation Certificate from ACAS, and he did so. He was aware that time limits applied to submit an application to this Tribunal. He then failed to present the proceedings for a further period of 15 months.
7. There is nothing in the claimant's original statement, nor in his grounds of application for this reconsideration, to indicate any compelling grounds as to why it was not reasonably practicable for the claimant to have submitted his claim within the relevant time limit. In addition, despite the direction to do so, the claimant has not addressed the second part of the statutory test,

- namely if it was not reasonably practicable to have presented the claim within the relevant time limit, why the substantial subsequent delay can be said to be within a reasonable time thereafter.
8. In my judgment, despite the fact that the claimant was unable to attend the original hearing, his unfair dismissal claim is clearly well out of time and his application for an extension of time is effectively hopeless.
 9. Judicial discretion as to reconsideration should be exercised having regard to the interests of both parties and the public interest in finality in litigation (Outasight VB Ltd v Brown UKEAT/0253/14/LA).
 10. In Ebury Partners UK Ltd v Davis EAT [2023] the EAT held that while it may be appropriate to reconsider a decision where there has been some procedural mishap, the jurisdiction should not be invoked to correct a supposed error made by the tribunal after the parties have had a fair opportunity to present their case on the relevant issue. This is particularly the case where the error alleges one of law, which is more appropriately corrected by the EAT. In my judgment, despite the fact the claimant was unable to attend the hearing, he has had a fair opportunity to present his case on the relevant issue as to whether the claim was presented out of time, and whether he should be afforded an extension of time.
 11. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge N J Roper
Dated 26 January 2024

Judgment sent to Parties on 06 February 2024

For the Tribunal Office