

JUDGMENT



EMPLOYMENT TRIBUNALS

Claimant: Mr. A RASHID

Respondent: DHL SERVICES LIMITED

HELD AT: BIRMINGHAM EMPLOYMENT TRIBUNAL ON THE PAPERS

ON: 23/02/24

BEFORE: EMPLOYMENT JUDGE MANLEY

REPRESENTATION

For the claimant: In person

For the Respondent: Jo Tunnicliff, Solicitor

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RECITAL

UPON the receipt of the Claimant's application for reconsideration by email dated 1 November 2023;

AND UPON inviting submissions from both parties on the application and also whether they contended that it should be heard at an oral hearing;

AND UPON both parties confirming that they agree for the application to be dealt with on the papers and the Tribunal determining that a hearing is not necessary in the interests of justice but being satisfied that the parties have been given a reasonable opportunity to make further written representations;

AND UPON the Tribunal considering the Claimant's application for reconsideration contained in a letter dated 31/10/23 together with a copy of a letter for a telephone appointment with Healthy Minds which was due to take place on 16 June 2023;

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AND UPON the Tribunal considering the Respondent's submissions contained within a letter dated 29 December 2023;

The judgment of the Tribunal is that:

1. The Claimant's application for reconsideration of the Judgment dated 16 October 2023 is dismissed and the judgment is confirmed, pursuant to rule 70 of the Employment Rules of Procedure (as amended) 2013.
2. The basis of the Claimant's application for reconsideration was that his mental health condition was such that it prevented him from submitting his claim in time. In particular it is contended that it caused him to procrastinate and put off doing things. The Claimant also refers to the case of *MTN-1 Limited v. Mr. David Ross O'Daly* [2022] EAT 130 in which a Respondent was granted an extension to submit an appeal to the EAT late.
3. The basis of the Claimant's application for an extension of time to bring his unlawful deduction from wages claim and his disability discrimination claim were due to him being ignorant of the tribunal time limit and the fact he was instead engaging with the Respondent to resolve the matter internally. The Claimant was specifically asked at the hearing on 10 October 2023 whether he was contending that his disability had prevented from submitting his claim in time but confirmed that this was not the basis of his application.
4. The evidence before the Tribunal on 10 October 2023 was that the Claimant had returned to work for the Respondent on in March 2022 and there was an occupational health report dated 23 March 2022, which stated that the Claimant following his return to work, reported that he was managing well at work and that his mood was stable. There were also a number of communications from the Claimant to the Respondent up to 17 May 2022 trying to resolve the issue internally and an email to ACAS on 1 August 2022. The evidence showed that the Claimant was well enough to work for the Respondent and also engage with both them and ACAS over the issues arising on his dispute.
5. The Tribunal also had evidence of the Claimant's medical condition in the form of three occupational health reports and a number of sick notes from the Claimant's GP all of which showed that the Claimant having been absent with ill health in December 2021 to March 2022 had been able to work and was managing well and was stable during the material time when his claim ought to have been submitted, namely between May 2022 and 4 September 2022.
6. It is clear that the letter now relied upon could have been placed before the Tribunal on 10 October 2022 but was not. It is also clear that evidence of a single telephone appointment with a mental health service would be have been unlikely to have any important influence on the hearing given that the reason of health was not relied upon despite opportunity having been given and would in any event not have established that the Claimant's ability to submit his claim had been hampered by ill health given that he was both able to work and correspond with management, the human resources department and ACAS during the material time.
7. The Tribunal has had regard to the case of *MTN-1 Limited v. Mr. David Ross O'Daly* [2022] EAT 130, which although not directly relevant, does illustrate that ill health can amount to a good reason to exercise a discretion to extend time. Further, the Tribunal acknowledges that ill health can amount to good grounds to grant

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extensions of time both under section 23 of the Employment Rights Act 1996 and section 123 of the Equality Act 2010 but this is not made out on the evidence before the Tribunal.

8. In the circumstances and applying the guidance in *Outasight VB Ltd v. Brown* [2015] ICR D11, EAT it is not considered to be in the interests of justice to grant the application for reconsideration.

Employment Judge MANLEY

23/02/24