



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Linfoot

Respondent: Cornwallis Care Services Ltd

Before: Employment Judge P Cadney

Representation:

Claimant: Written Submission

Respondent: Written Submission

Reconsideration Judgment

The judgment of the tribunal is that-

- i) The respondent's application to revoke the Judgment is dismissed.

Reasons

1. The respondent has submitted on 10th April 2024, an application for reconsideration of a judgment given following a hearing on 14th June 2022.
2. In summary the history of the litigation is as follows. On 28th September 2021 the claimant submitted her claim, which primarily brought a claim for unfair dismissal. She alleged that the real reason for her dismissal, which if correct would be automatically unfair, was that she had complained (whistleblown) about staffing level breaches and health monitoring equipment not working. It was served on the respondent's registered office on 25th November 2021. Any response should have been received by 23rd December 2021 but none was lodged. On 27th January 2022 the parties were notified (again sent to the respondent's registered office) that no response had been entered and that the TCMPH listed for 14th June 2022 would be converted to a remedy hearing. I heard the case on 14th June 2022. The claimant attended but the respondent did not, and I gave judgment for the claimant, upholding her claim for automatic

unfair dismissal, and awarding a total of £15,601.00. In the reconsideration application the respondent asserts that it was not given notification of the hearing, which is extremely curious as it was sent to its registered office.

3. In any event, the judgment was promulgated on 4th July 2022 and was clearly received by the respondent, as by an email of 18th July 2022 it indicated that it intended to appeal the judgment. It is not entirely clear what happened to any appeal. As part of the reconsideration application the respondent contends that it appealed, but has received no acknowledgment or any further communication from the EAT. Attached to the reconsideration application is a letter dated 26th April 2023 to the EAT which contains an EAT reference number, which would appear to suggest that at some point an appeal had been lodged and accepted and a reference number provided. There is no further indication from the respondent of any further communication between it and the EAT after April 2023, and whether they have made any enquires as to the appeal. Nor is there any explanation as to why they have waited almost a year since sending that letter to the EAT, and have now decided to attempt to pursue this by way of a reconsideration application. In an email of 20th April 2024 Ms Mair Howard acting for the claimant states that she contacted the EAT and was informed that the respondent had appealed in 2023, and had been asked further information by the EAT which had never been supplied and the appeal had been closed.
4. In the letter to the EAT the respondent asserts that the claimant was dismissed for gross misconduct, and in the reconsideration application, that they are “able to contest the judgment and have evidence to confirm our position..”, and that it would be in the interests of justice for the judgment to be revoked. However they have never supplied a draft response setting out that defence.
5. Rule 71 provides that an application for reconsideration must be made within 14 days of the decision being sent to the parties, although the tribunal has a discretion to extend time, and there are examples of time being extended many years after the event. In this case the application has been made some twenty one months after the decision was promulgated, and when the respondent had clearly made a decision within time to appeal, and did not make any reconsideration application. There is no question in this case that the respondent only became aware that judgment had been entered at some later point.
6. The tribunal can vary or revoke a judgment on a reconsideration application if it is in the interests of justice to do so. On one analysis if the respondent does have an arguable defence to the claim then it would be in the interests of justice to allow it to be heard. However, the respondent did not present a response to the claim in time, and has not submitted a draft response at point since; and has not provided any explanation as to why it did not originally make a reconsideration application, or why it has waited twenty one months to make the re-consideration application thereafter. Effectively all the information it places before me in support of the application is an assertion that it has a defence to the claim with no detail provided of that defence, and no explanation of why it has delayed for nearly two years, after it was aware that the judgment had been entered, in making the application.

7. The claimant objects to the reconsideration application being permitted at this distance in time, it being nearly three years since her dismissal, and nearly two years since judgment was entered; and that it would immensely prejudicial to her and a “travesty” if the respondent were now permitted to start the process again. It will clearly be enormously prejudicial for the claimant to re-start the process now, with the final hearing being years after it was originally listed.
8. In the circumstances in my judgment the prejudice to the claimant of allowing the application significantly outweighs that to the respondent of not permitting it; and I am not persuaded that any discretion should be exercised in the respondent’s favour where it has not supplied a draft response or any explanation of the delay. There is also a public interest in finality in litigation which would not be served by re-opening a claim nearly two years after it concluded in the absence some very compelling reason that it is in the interests of justice to do so.
9. In the circumstances, there is nothing in the reconsideration application which sets out any basis for considering that there is a reasonable prospect of the original decision being varied or revoked (r72(1) Employment Tribunals Rule of Procedure 2013) and accordingly the application is refused.

Employment Judge P Cadney
Dated: 10th May 2024

**Judgment entered into Register
And copies sent to the parties on
29 May 2024 By Mr J McCormick**

for Secretary of the Tribunals

