



EMPLOYMENT TRIBUNALS

Claimant: Mrs F I Athif

Respondents: (1) Mr M J Lallmohamud
(2) Spice E17 Ltd

JUDGMENT

1. The 1st Respondent's application dated 10 December 2023 for reconsideration of the judgment sent to parties on 27 November 2023 is refused.
2. The 2nd Respondent's application dated 11 February 2024, for reconsideration of the judgment sent to the parties on 27 November 2023 is refused.
3. The Tribunal's judgment is confirmed.

REASONS

1. The Tribunal conducted the liability hearing in this matter on 7, 8 September and 12 October 2023. The written judgment and reasons were promulgated to the parties on 27 November 2023. The Claimant brought complaints of indirect sex discrimination, harassment, unlawful deduction of wages and a complaint that the Respondent failed to provide her with written terms and conditions of employment. The Claimant was successful in all her claims.
2. There have been applications for reconsideration from both Respondents. The Tribunal will address both applications in this decision and reasons. The Judge addressed both applications in some detail as neither Respondent is legally represented.
3. The 1st Respondent, Mr Lallamohamud applied for reconsideration on 10 December 2023. This was not referred to the Judge until 11 February 2024 and that is why the application was refused as being out of time. The Tribunal can now confirm that the application was submitted within 14 days of the judgment being sent to the parties.
4. Mr Vasilica Ostafie, on behalf of the 2nd Respondent wrote to the Tribunal on 11 February to apply for reconsideration of the judgment sent to the parties on 27 November 2023. This application was submitted out of time. The Tribunal has granted the 2nd Respondent an extension of time to allow it to be considered.

5. The Employment Tribunals Rules of Procedure 2013 provides at Rules 70 – 72, a process for reconsideration of judgments.
6. Having considered the Claimant's application, it is this Tribunal's judgment that there are no reasonable prospects of the original decision being varied or revoked, because:
7. The Claimant's initial ET1 claim form was issued on 27 January 2021. Mr Lallamohamud is correct when he states in his application for reconsideration that the claim at that time was simply for outstanding wages and holiday pay. However, in box 8.1 of that form the Claimant described being assaulted and having suffered injuries.
8. On 9 December 2021, EJ Gardiner directed that a letter should be written to the Claimant to clarify whether she is also bringing a sex discrimination claim because she referred in her claim form to being assaulted by her employer because he thought that as a woman she could not fight back. The Claimant replied to confirm that she did want to bring a complaint of sex discrimination.
9. The Claimant's application to amend her claim to add a complaint of sex discrimination was heard at a preliminary hearing before EJ F Allen on 20 January 2022, which the 1st Respondent attended. The Judge listened to both the Claimant and the 1st Respondent, and she allowed the amendment. From the date of that hearing, the Claimant's claim included a complaint of sex discrimination related to the alleged assault, as part of her case. A written record of that hearing was sent to both parties. The exact allegation of sex discrimination is set out in paragraph 9 of the minutes of that case management hearing. Those were the allegations considered by this Tribunal in the final hearing. There was no appeal against that decision and no application for reconsideration made by the 1st Respondent.
10. There were then two postponements of hearings in this case which were caused by applications from the 1st Respondent.
11. At the next preliminary hearing on 25 January 2023, before EJ S Shore, the 1st Respondent was present when the Judge confirmed in the hearing and in writing that he would add Spice E17 Ltd as the 2nd Respondent. This was confirmed in the minutes of that hearing.
12. The minutes also confirm that the 2nd Respondent was to send its written response to the claim to the Tribunal by 4 March 2023. The complaints discussed between the parties in that hearing and agreed as the issues to be determined at the final hearing are set out in paragraph 50 of the minutes of that hearing. This document was sent to both Respondents. The document shows that the complaints to be determined at a final hearing were the complaints of harassment, indirect sex discrimination, failure to pay holiday pay and a claim for compensation for not being given written terms and conditions of employment under section 38 Employment Act 2002.
13. Those were the complaints that this Tribunal had to consider at the final hearing. Although EJ Shore stated in the minutes that the harassment and sex

discrimination complaints were directed at the 1st Respondent and that the failure to pay holiday pay and the complaint about the absence of written terms and conditions were directed at the 2nd Respondent, that is not the way they were set out in the list of issues, which the parties agreed to. The Tribunal followed that list of issues in arriving at its judgment. There was no application for reconsideration or appeal against EJ Shore's decision.

14. The Tribunal sent the claim to the 2nd Respondent on 3 February 2023. The Tribunal sent a Response form for completion along with copies of all correspondence on the file and the record of the previous preliminary hearings. There was no response from Mr Vasilica Ostafie, even though the documents were addressed to him personally at the company office address, which the 1st Respondent gave at the hearing.
15. On 23 March 2023, the Tribunal wrote again to Mr Ostafie to inform him that as the 2nd Respondent had failed to send in a completed Response form, under Rule 21 of the Tribunal Rules of Procedure 2013, a default judgment could be issued against the 2nd Respondent. There was no response from Mr Ostafie.
16. A notice of hearing was sent to the Claimant and both Respondents on 12 July to notify them of the hearing dates in September. The sequence of events from then on are set out in paragraphs 2 – 11 of the detailed full judgment and reasons sent to the parties on 27 November 2023. The Tribunal adjourned the hearing to allow the 1st Respondent the opportunity to attend but he failed to attend at the resumed hearing. The 2nd Respondent was also sent a Notice of Hearing but failed to respond or to attend the hearing.
17. On 8 September the 1st Respondent wrote to the Tribunal to say that he would be able to attend the hearing on 12 October. He also stated that he had told Mr Vasilica of the Hearing on 12 October. The Tribunal was expecting both Respondents at that hearing. Neither Respondent attended the hearing. In the circumstances, the Tribunal decided that it was in keeping with the overriding objective to proceed with the hearing and to consider the documents sent in by the Respondents as well as the Claimant's documents and her live evidence. The reasons for doing so are already set out in the written judgment sent to the parties on 27 November 2023.
18. The Tribunal has not made any judgment about Mrs Lallamohamud's position in the business. In the written reasons it states that she was a director because at the time, both the 1st Respondent and Mrs Lallamohamud led the Claimant to believe that she was. No part of the judgment turns on Mrs Lallamohamud being a director. However, at the time of the incidents that the Claimant complained about, Mr Lallamohamud was the director of the Second Respondent. He did not resign his directorship until November 2021. It is therefore correct that the 2nd Respondent is held responsible for his actions as well as him, on an individual basis.
19. The 1st Respondent sent evidence to the court on behalf of himself and the 2nd Respondent. The Tribunal considered all his evidence in coming to its conclusions on the Claimant's case. The Tribunal referred in its judgment to every piece of evidence that it considered and how it came to the findings of fact that it made.

20. The police investigation into the Claimant's complaint about being assaulted is separate from this Tribunal's process. The employment tribunal is not a criminal court, and we had no information about the police investigation. We made no judgment on anyone's guilt from a criminal standpoint. It was open to the Respondents to produce evidence from the police investigation to the Tribunal for it to consider, but the Respondents failed to do so.
21. The Respondents has failed to refer to anything in their application for reconsideration that would cause the Tribunal to reconsider its judgment.
22. In those circumstances, it is this Tribunal's judgment, having considered the 1st and 2nd Respondents' applications for reconsideration, that there are no grounds to reconsider the judgment. It is this Tribunal's judgment to confirm the liability and remedy judgment.
23. There is nothing in the Respondents' application for reconsideration that in the interests of justice, would require this decision to be reviewed or changed.
24. Both Respondents' applications for reconsideration of the Tribunal's judgment dated 10 December 2023 and 11 February 2024 respectively, are refused for the reasons stated above, under Rules 70 and 72 of the Employment Tribunals Rules 2013. The judgment promulgated to the parties on 27 November 2023 is confirmed.

Employment Judge J Jones

22 May 2024