



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Sowden

Respondent Optimal Recruitment Solutions Ltd

JUDGMENT ON A RECONSIDERATION

The claimant's application dated 9 September 2024, for (a) reconsideration of the Judgment of Employment Judge Brain (case number: 1800763/2023) sent to the parties on 26 July 2023 and (b) a reconsideration of my Judgment on the employer's contract claim (case number: 1803092/2023) is refused.

REASONS

There is no reasonable prospect of the original decision(s) being varied or revoked, because:

1. I have considered the claimant's application for reconsideration of the Judgments in this matter. The application was emailed by the claimant and received by the Tribunal on 9 September 2024. It consists of a page of tightly typed submissions. I have taken the contents of the application into account.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.
3. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special

circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

Background

4. The claimant presented her claim under case number 1800763/2023, to the Leeds Employment Tribunal on 25 January 2023, comprising complaints of unfair dismissal, disability discrimination, breach of contract and unpaid wages. By a response dated 4 May 2023, the respondent presented an employer's contract claim which was given case number 1803902/20230.
5. On 13 July 2023, both cases proceeded to a preliminary hearing before Employment Judge Brain. At that stage, the respondent did not have legal representation. Employment Judge Brain gave Judgment, sent to the parties on 26 July 2023, to the effect that only the complaints of disability discrimination and breach of contract/unpaid wages should proceed with the latter limited to a complaint about commission for work undertaken in September 2022 for which payment was due in October 2022. All other complaints were ruled as being out of time and/or that the Tribunal lacked jurisdiction. The employer's contract claim also proceeded.
6. On 27 November 2023, a case management preliminary hearing took place before Employment Judge Miller.
7. Thereafter, a conflict arose because the respondent instructed a solicitor who is a relative of Employment Judge Brain. As a result, the case files were transferred from the Leeds Employment Tribunal region to the Manchester Employment Tribunal region.
8. On 28 August 2024, I conducted a preliminary hearing at which I gave Judgment on the employer's contract claim and also, upon application by the claimant, I conducted a reconsideration of the decision of Employment Judge Brain as to the correct identity of the respondent employer. As explained in my orders resulting from that preliminary hearing, it was not practicable for Employment Judge Brain to reconsider the decision in issue due to the conflict arising. I sought guidance from my Regional Employment Judge who appointed me to deal with the reconsideration application pursuant to Rule 72(3) of the Employment Tribunal Rules of Procedure.
9. By the same token, I am appointed to deal with the claimant's renewed application for reconsideration sent to the Tribunal on 9 September 2024.

The application

10. The claimant's application seeks a reconsideration of the decision of Employment Judge Brain as to which complaints should proceed and the extent of them, in particular the breach of contract/unpaid wages complaint. The claimant contends that her complaint of breach of contract was allowed by Employment Judge Brain in respect of her last month's wages.
11. The claimant also contends that she had requested that the loan monies, sought from her under the employer's contract claim, should be deducted from her last month's pay. In those circumstances, the claimant contends that my Judgment on the employer's contract claim should be "put on hold".
12. Despite the points raised in her application, there is no reasonable prospect of the claimant establishing that the Tribunal made an error of law, or that my Judgment on the employer's contract claim was perverse. It is not in the interests of justice to reopen such matters once decided.
13. On 13 July 2023, Employment Judge Brain heard submissions on the issue of whether the claimant had brought each of her claims in time taking account of the applicable statutory time limits. He determined that the complaints of breach of contract/unpaid wages were presented within the relevant limitation periods, but that this finding applied only to that part of the claim which relates to commission for work undertaken where the entitlement to a commission payment crystallised in September 2022 and was payable in the October pay run. As Employment Judge Brain described it, the complaints should be "*... confined to the claim for commission payable at the end of October 2022 for work completed in September 2022.*" – see the case management summary from that hearing, paragraph 5.2.
14. On 28 August 2024, when I asked about the substance of the employer's contract claim, the claimant told me that she did not contest the contract claim and she admitted that the loan was outstanding, in the sum of £424.68 – see my case management summary paragraph 5(c). In those circumstances, I gave Judgment in the amount of the employer's contract claim pursuant to rule 21. There is no record of the claimant seeking to set off the outstanding loan owed against any other monies, nor did she request such at the preliminary hearing, nor did she ask that the matter be put off until the final hearing. In any event, rule 21 empowers me to make a determination of the employer's contract claim where the claimant (as respondent to the contract claim) has clearly stated that the claim is not contested.
15. In addition, there is no facility under the Tribunal rules to put a Judgment "on hold" as the claimant wishes.

Conclusion

16. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of either of the original decisions being varied or revoked. The application for reconsideration is refused.

Employment Judge Batten
Date: 5 November 2024

JUDGMENT SENT TO THE PARTIES ON:
12 November 2024

FOR THE TRIBUNAL OFFICE