



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Wallace

Respondent: Coleman Training Ltd

RECONSIDERATION JUDGMENT

The claimant's application dated 13 November 2024 for reconsideration of the strike out judgment sent to the parties on 7 November 2024 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment striking out her claims. That application is contained in an initial email dated 7 November 2024. This did not explain the grounds for reconsideration.
2. The claimant was invited to provide more information. The claimant provided this in a second email dated 13 November 2024.

The Law

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
4. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
5. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily.”

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in a way which is proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The claimant's claim was struck out because she lacks the required two years' continuous service to make a claim of unfair dismissal. The claimant has suggested that she does not need that service because of the reason for her dismissal, namely:
 - 7.1. because she asked for a pay rise; and/or
 - 7.2. because she asked for an accurate copy of her contract of employment.
8. These do not appear to be reasons that fall within the scope of the exceptions to the requirement for two years' continuous service before a claim of unfair dismissal can be made.
9. There is no suggestion that the claimant was paid below the minimum wage, such that her request for a pay rise could amount to an assertion of a breach of that requirement. The claimant states in her reconsideration application that she was paid £14 per hour, this is significantly more than the minimum wage.
10. It is not clear how an alleged inaccuracy in her contract of employment would fall within the relevant exceptions to the service requirement. The claimant has, despite being asked to explain the basis for her reconsideration application, merely stated that she was advised of this by ACAS.

Conclusion

11. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. There is no information that suggests that the claimant's claim would fall within one of the exceptions to the requirement to have two years' continuous service to make a claim of unfair dismissal.
12. The claimant's assertion that ACAS advised her that the two-year rule would not apply to her claim is not explained further. If such advice was given it does not appear to be correct advice.

13. It would not be proportionate to allow a claim to proceed when the claimant does not have the required service to make her eligible to pursue the claim. Accordingly, it would not be in the interests of justice to reconsider the decision to strike out the claimant's claim thus allowing her claim to proceed, and her application for reconsideration is refused.

Employment Judge Buzzard

27 November 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
28 November 2024

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FOR THE TRIBUNAL OFFICE