



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MAN NGA WAN

V

JABEZ WAI YIU LAM

ORDER OF THE TRIBUNAL

BEFORE: EMPLOYMENT JUDGE S POVEY

RECONSIDERATION ORDER

In respect of the Claimant's request for reconsideration of the judgment of 10 September 2024 ('the Judgment'), it is ordered that:

1. It is necessary in the interests of justice to reconsider the Judgment.
2. On reconsideration, Paragraph 6 of the Judgement is varied, in that the final sentence is removed and the case is not struck out as a whole.
3. The case will be listed for a Preliminary Hearing to determine:
 - 3.1. The Claimant's application of 23 October 2024 to amend her claim & add a second respondent; and
 - 3.2. Any further case management as is deemed necessary to prepare the case for final hearing.
4. The Claimant's application of 23 October 2024, her ET1 & the Respondent's ET3, along with the Notice of Preliminary Hearing will be served on Hackney Chinese Community Services Association Limited, who will be permitted to attend the Preliminary Hearing and make such representations as it wishes in respect of the application to add it as a respondent to these proceedings.
5. For the avoidance of doubt, the hearing listed for 28 & 29 November 2024 has been vacated.

REASONS

Background

1. By a judgment of 10 September 2024 and sent to the parties on 2 October 2024 ('the Judgment'), I struck out the Claimant's complaint of unfair dismissal. Paragraph 6 of the Judgement stated as follows:

Accordingly, the complaint of unfair dismissal is struck out. As that was the only complaint brought, the case is struck out as a whole and will not proceed.

2. On 3 October 2024, the Claimant applied for reconsideration of the Judgment, on the grounds that, whilst it was accepted that the complaint of unfair dismissal should be struck out (as the Claimant did not have the requisite length of continuous service per section 108 of the Employment Rights Act 1996), she was, nonetheless, bringing complaints of sexual harassment and victimisation under the Equality Act 2010. As such, the claim as a whole should not have been struck out.
3. The application for reconsideration was referred to me, as the judge who issued the Judgement. By a letter dated 21 October 2024, and pursuant to Rule 72(1) of schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2023 ('the Procedure Rules'), I set out my provisional view on the application, inviting the Respondent's comments and also sought both parties views on whether the application, if opposed, could be determined without a hearing.
4. By an email dated 22 October 2024, the Respondent objected to the Claimant's application for reconsideration and set out reasons why. The Respondent did not express any view on whether the reconsideration application could be determined without a hearing.
5. By an email dated 23 October 2024, the Claimant responded to the Respondent's objections, indicated that she was content with the application being determined without a hearing and made an application to amend her claim and add Hackney Chinese Community Services Association Limited to the proceedings.
6. Having regard to the response to my letter of 21 October 2024, I decided that a hearing was not necessary in the interests of justice. In determining the application for reconsideration, I have had full regard to the written submissions received and referred to, above.

Determination of the application

7. The Claimant's ET1 claim form, at Section 8.2, contained allegations against the Respondent which, when read holistically, went beyond unfair dismissal. In particular, allegations were made regarding the Respondent's

behaviour toward the Claimant and the impact it is alleged that behaviour had upon the Claimant.

8. At the initial consideration of the claim and response (pursuant to Rule 26 of the Procedure Rules), Regional Employment Judge Burgher directed that the strike out warning of 7 August 2024 be sent to the Claimant. The text of that warning was as follows (emphasis added):

In your claim form one of your complaints is that you were unfairly dismissed.

Under section 108 of the Employment Rights Act 1996 claimants are not entitled to bring a complaint of unfair dismissal unless they were employed for two years or more except in certain specific circumstances which do not seem to apply in your case.

It appears from your claim that you were employed for less than two years. If so, the Tribunal cannot consider your complaint that you were unfairly dismissed.

As you do not appear to be entitled to bring that part of your claim an Employment Judge is proposing to strike it out. This does not affect the other complaints in your claim form.

You have until 21 August 2024 to give reasons in writing why your complaint of unfair dismissal should not be struck out.

Meanwhile, the respondent has been told that no response to your unfair dismissal claim is necessary at this stage.

9. It is clear from the strike out warning that the Tribunal was managing the claim on the basis that it appeared to raise more than one complaint.
10. By an email dated 21 August 2024, the Claimant accepted that, due to her lack of continuous service, her complaint of unfair dismissal should be struck out. On 3 September 2024, the Claimant's solicitors informed the Tribunal that they had been instructed and were placed on the record.
11. On 30 August 2024, the case was referred to the duty judge. On 10 September 2024, as duty judge, I issued the Judgment.
12. In my letter of 21 October 2024, I set out my provisional views on the reconsider application, as follows:

The Employment Judge's provisional view is that the application to reconsider the judgment should be granted because, if as submitted, the claimant brings complaints other than unfair dismissal, only the unfair dismissal complaint is being struck out and the judgment of the Tribunal should properly reflect that (by removing reference to the whole claim being struck out). It is consistent with the overriding objective for there to be proper consideration of any other complaints which it is asserted are being pursued by the claimant...

13. Having now properly reviewed the correspondence detailed above, Paragraph 6 of the Judgment was premised on an error. The complaint of unfair dismissal was not the only complaint being pursued by the Claimant, as reflected in the ET1 and the strike out warning of 7 August 2024.
14. On that basis, it was both erroneous, a breach of procedure and inconsistent with the overriding objective to strike out the whole claim. It is, for those reasons, necessary in the interests of justice to vary the Judgement so that only the complaint of unfair dismissal is struck out.
15. It follows that claim as a whole is not struck out.
16. The Claimant seeks to amend the claim and add a second respondent. Those matters will be considered and determined at a Preliminary Hearing, the date and time of which will be notified to the parties and the prospective second respondent in due course.

EMPLOYMENT JUDGE S POVEY

Dated: 28 January 2025