Case No: 3304636/2018

EMPLOYMENT TRIBUNALS

Claimant: Miss M Bonney
Respondent: Diligent Care Services Ltd

Heard at: Watford **On:** 22 October 2024

Before: Employment Judge Dick

Representation
Claimant: In person
Respondent: Ms Y Barley – consultant (by CVP)

WRITTEN REASONS

1. From 11 to 14 June 2024 I conducted a hearing at which the claimant's complaints of unfair dismissal and breach of contract were considered. My reserved judgment and reasons ("the reasons"), upholding the complaint of breach of contract but dismissing the complaints of ordinary and automatically unfair dismissal, were sent to the parties on 13 September 2024. On 22 October 2024 I conducted a remedy hearing, awarding the claimant damages for the breach of contract. During the course of that hearing the claimant indicated that she wished to ask me to reconsider the judgment dismissing her complaints of unfair dismissal. Despite the application not having been made within 14 days of when the judgment was sent to the parties, as required by what was then rule 71, I exercised my discretion to hear the application; although no written application had been made, Ms Barley for the respondent pragmatically did not object to my hearing the application there and then.

2. Having heard submissions I refused the application and confirmed the original liability judgment, giving oral reasons. The written record of that decision was contained in my remedy judgment which was sent to the parties on 7 December 2024. On 21 December 2024 (i.e. in time) the claimant emailed the Tribunal to request written reasons for my decision to refuse to reconsider the liability judgment. Unfortunately that request was not referred to me until 14 February 2025, when I was away, and I did not receive it until I returned on 24 February. My apologies for the delay since then in providing the reasons which follow.

3. Since I have already provided written reasons for my liability judgment, there is no need for me to restate them here. The rule I must now apply is rule 68:

> (1) The Tribunal may… on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.
> (2) A judgment under reconsideration may be confirmed, varied or revoked.

4. For the purposes of the application I accepted that it was in the interests of justice to reconsider the liability judgment. The application was made on a number of bases which I deal with below in turn. None of the points raised by the claimant individually led me to the conclusion that I should vary or revoke the judgment, nor did they cumulatively have that effect. I therefore confirmed the judgment. The points raised by the claimant were as follows.

5. In the reasons I referred (at para 23) to a "statement of main terms of employment" document at p 134 of the bundle purportedly signed by the claimant, which the claimant disputed having signed. I expressly said that I did not need to resolve that dispute – there was no real dispute about the terms of the claimant's employment and everyone agreed that she was employed by the respondent from 2016. I did not mention a similar document at p 137 which was not signed by anyone. In her application for reconsideration the claimant told me that she had never seen the document at p 134 but had seen, but not signed, the one at p 137. The claimant pointed to some differences between the two documents but none that could possibly in my judgment have been material to my decision. The same applies to points the claimant wished to make about the training agreement, which is one of the documents referred to at para 24 of my reasons.

6. The claimant wanted to raise an issue over whether the employment contract was legally binding or enforceable, perhaps, if I understood correctly, in the context of the claimant's assertion that there had been a breach of the Working Time Regulations. There was no such complaint before me at the liability hearing. If the employment contract was not legally binding that would have made the complaints that were before me less likely, not more likely, to have succeeded.

7. The claimant told me about a witness that was not available at the time of the hearing, and which she accepted she had not told me about at the time of the hearing, who could have provided analysis on whether the employment contract was legally binding (which would clearly in my judgment have been inadmissible opinion evidence) as well as whether the claimant had in fact signed the contract. For the reasons I have given above this evidence, even if admissible, would have had no relevance. Even if it had been relevant, no statement from this witness had ever been provided to the respondent.

8. The claimant made submissions about other documents that were in the bundle for the liability hearing. The submissions could have been made at the liability hearing. She also asked me to consider documents which were not in the bundle for the liability hearing. I did briefly consider them and they seemed to

me to have no relevance to the issues which I had to decide at the liability hearing. I was provided with no reason why they could not have been in the bundle if they were relevant – they were not new documents and the parties had had years to prepare for the hearing. So far as I could understand it the claimant appeared to think that these documents were relevant to the time limits and amendment points. Neither of these points were decided against the claimant – her unfair dismissal complaints were dismissed for entirely different reasons.

9. The claimant referred to some authorities on employment status which she said had only been provided to her last week by her barrister. She was not represented at either of the hearings before me. I was provided with no good reason why the authorities could not have been provided to me at the liability hearing.

10. The claimant sought to raise points about whether there was or was not a TUPE transfer. These points cannot have been relevant given my finding that the claimant was not an employee before the "transfer", i.e. before the respondent took over from the London Borough of Haringey.

11. The claimant did correctly identify two errors in my written reasons. First, I accept that, as she told me in the course of her application, Stacey Shilleh did not work for the respondent. This point could not possibly have any material impact upon my decision, even if I did not, as I in fact did, attach little if any weight to Ms Shilleh's untested evidence. Second, at paragraph 4, when I summarised the List of Issues, I incorrectly said that the claimant had been employed by the respondent for seven months; I meant one year and seven months. (The list of issues incorrectly records the claimant's employment as starting in 2017 – it was in fact 2016.) This error is not repeated elsewhere in my reasons, which give the correct dates for the claimant's employment. Given that I found that the claimant was not employed (for the purposes of the Employment Rights Act 1996) before she was employed by the respondent, even if I had repeated the error it would not have been material – she would still have had under two years' continuous employment on either view.

12. In response the claimant's enquiry, I explained to her that I had no power to grant an extension of time in which to apply to the EAT for leave to appeal. I directed her to the EAT website.

Approved by:

Employment Judge Dick

18 March 2025

SENT TO THE PARTIES ON

25 March 2025

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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/