



EMPLOYMENT TRIBUNALS

Claimant: Ms B Yavuz

Respondent: Bahay Kubo Housing Association Limited

JUDGMENT

The Claimant's application dated 27 May 2025 for reconsideration of the judgment sent to the parties on 13 May 2025 under Rule 68-70 Tribunal Rules 2024 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the following reasons:

1. The Claimant made an application for reconsideration of the judgment on 27 May 2025. It was referred to me on 13 June 2025.
2. The Claimant set out three reasons why my decision on her application for interim relief should be reconsidered: (1) that there was no statutory provision that an application for interim relief must follow the effective date of termination (EDT) (2) that the purpose of a claim for interim relief requires a non-rigid interpretation and that a claim before the EDT being precluded frustrates the purpose of the legislation and (3) that dismissing the application on a technicality was disproportionate and not in accordance with the overriding objective in Rule 2 of the 2013 Rules (now Rule 3 of the 2024 Rules).
3. An application for interim relief under s128 Employment Rights Act 1996 is an application it is not a claim. The interim relief application can only be made where there is a claim for automatic unfair dismissal on one of the specific grounds. The application for interim relief must therefore be underpinned by an unfair dismissal claim over which the Tribunal has jurisdiction.
4. I decided that the underlying unfair dismissal claim was not one over which the Tribunal had jurisdiction (written reasons paras 11-16). That meant that the application for interim relief based on the unfair dismissal claim could not succeed because the underlying unfair dismissal claim was premature.

5. This was on the very specific ground that although s128 specifically allows for an application for interim relief to be made before, on or after the EDT (provided made by the date which is 7 days after the EDT) the issue for the Claimant was that she had presented her underlying claim for unfair dismissal before her EDT (which arose on the expiry of a fixed term).
6. s111(3) Employment Rights Act 1996 specifically says that in cases where notice is given, the unfair dismissal claim can be presented in the notice period ie before the EDT. It does not also say that a claim can be presented before the EDT where the employment ends by reason of expiry of a fixed term. I alerted both representatives in advance to the potential application of Throsby v Imperial College 1977 IRLR 337 (reasons para 10) so that both could comment on it in their submissions.
7. As regards ground 1, the issue was not the date of the application for interim relief but the date of the presentation of the underlying unfair dismissal claim.
8. As regards ground 2, the situation of an employee facing expiry of a fixed term could have been included in s111(3) Employment Rights Act allowing for a claim for unfair dismissal to be presented before the fixed term expires, but was not. The provisions in s128 regarding being able to make an application for interim relief before, during or after the EDT are about the application for interim relief, not about the underlying unfair dismissal claim and can be assumed to have been intended to reflect the provisions in s111(3), to ensure that employees in their notice period who have presented an unfair dismissal claim can also make an application for interim relief.
9. As regards ground 3 it is not clear why the Claimant who was represented by Counsel felt that she was not on an equal footing. The application for interim relief was not dismissed on a 'technicality' but on an analysis of the statutory provisions. The Claimant's particular situation may point to a gap in the Employment Rights Act 1996 as regards the availability of an application for interim relief during the period before a fixed term expires, because the unfair dismissal claim cannot be presented at that stage; it does not however preclude an application for interim relief based on a non-premature unfair dismissal claim at a later date. The remedy of interim relief remains available.

Employment Judge Reid
Dated: 18 June 2025