



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Tahirkheli, now known as Ms L Dean-Verity

Respondent: Khan Solicitors Limited

JUDGMENT

1. The Claimant's application for an extension of time to apply for the Judgment of 21 March 2014 to be reconsidered is refused.
2. The Claimant's application for reconsideration of the Judgment of 21 March 2014 is refused, having been made out of time.

REASONS

1. The Tribunal has power under Rule 70 of its Rules of Procedure to reconsider any Judgment where it is necessary in the interests of justice to do so. An application for reconsideration must be presented within 14 days of the date on which the written record of the decision was sent to the parties (Rule 71) but the Tribunal has power to extend that time limit (Rule 5).
2. The Reserved Judgment and Reasons in this claim were sent to the parties on 7 April 2014. The application for reconsideration was made on 21 February 2020, nearly six years out of time. The first issue for the Tribunal to decide is therefore whether it should grant the Claimant's application for an extension of time. That decision must be made in accordance with the overriding objective of dealing with cases fairly and justly (Rule 2).
3. The basis of the Claimant's application for reconsideration, should it be allowed to proceed, is that the Respondent sent the Claimant documents on 22 February 2018 accompanying a Pre-Action Letter of Claim in relation to civil proceedings it intended to bring against her and her former husband. She says that those documents ("the new documents") cast doubt on the findings made by the Tribunal as to her conduct and that, as the new documents were not available at the Tribunal Hearing because the Respondent had failed to comply with the Tribunal's Order for disclosure, it would be in the interests of justice to reconsider

the decision. The extent to which the new documents are in fact relevant to the Tribunal's findings would need to be explored at a Hearing if the application for reconsideration were to proceed. For the purposes of its consideration of whether to extend time to make that application, the Tribunal is prepared to assume that, if it considered the reconsideration application, there would be a reasonable prospect of it deciding to revoke its decision and take it again, taking into account the new documents.

Background facts

4. The Claimant was provided with information about how to appeal against or apply for a reconsideration of the Judgment, including the applicable time limits, in the Tribunal's letter of 7 April 2014 accompanying the Judgment and Reasons. Later, she corresponded with the President of the Employment Tribunals (England and Wales) about the Tribunal's decision. In a letter dated 2 August 2017 he pointed out to her that she had the right to appeal against the Tribunal's decision or to apply for a reconsideration, and that "there are relatively strict time limits for doing so".
5. Notwithstanding the fact that she had information about time limits, the Claimant did not apply for reconsideration of the Judgment and did not lodge her appeal against it with the Employment Appeal Tribunal (EAT) until 20 July 2018, five months after she received the new documents and over four years after the Tribunal's Judgment. On 4 February 2019 the EAT refused the Claimant's appeal against the Registrar's refusal of her application for an extension of time for appealing against the Tribunal's Judgment.
6. The EAT sent out the sealed copy of its decision on 24 April 2019. On that date the Claimant emailed the Tribunal to ask whether it would be willing to reconsider its original findings in the light of the EAT's decision, which she attached. She did not make an application at that stage. On 30 April 2019 the Tribunal replied that it would consider the Claimant's application for reconsideration if and when she made it. She was told that if she wanted the Tribunal to exercise its power under Rule 5 to extend time for the application, she would need to explain why she considered the Tribunal should do so.
7. The Claimant did not make her application for reconsideration until 21 February 2020, nearly 10 months later.

Relevant factors

8. The Tribunal has considered whether it would be in accordance with the overriding objective of dealing with this case fairly and justly to allow an extension of time, including the factors put forward by the Claimant in her written submissions in support of her application. The Tribunal bears in mind that time

limits for challenging Tribunals' decisions are important because they ensure that issues are dealt with without delay and there can be finality to the litigation.

9. The Tribunal is not satisfied that there are good and cogent reasons for the Claimant's very substantial delay in presenting this application. She is a lawyer, currently a practising barrister. The Tribunal is satisfied that she can reasonably have been expected to understand the importance of time limits, either because of her existing professional knowledge or because of the information the Tribunal gave her. She can also reasonably have been expected to have explored the possibility of a reconsideration application once she received the new documents. She has waited two years after receiving the new documents, which she says will establish that the Tribunal's findings were unsound, before applying for a reconsideration. If, as she says in her witness statement in support of her application, she is "deeply troubled" that she has never had a chance to clear her name properly, the Tribunal would have expected her to have made her application for reconsideration or appealed immediately after she received the Tribunal's decision or, at the latest, soon after she received the new documents in February 2018. If, as she says, she only realised that an application for reconsideration was appropriate because the EAT indicated as much in its decision, the Tribunal would have expected her to have made her application when she had that decision, in February 2019 or soon thereafter. She did not do so. In fact, from the chronology provided in the Claimant's submissions, it appears more likely than not that the existence and timing of this application can be explained by the fact that the Claimant has brought judicial review proceedings to challenge the decision of the SRA. These have been stayed because there is a potential alternative remedy in the form of an application for reconsideration to this Tribunal and the Claimant has been given time to make that application.
10. The Tribunal does not accept that refusing to extend time would cause the Claimant substantial prejudice.
11. The Claimant says that the Tribunal will be precluded from considering the merits of her reconsideration application. That is the case, but the reason for that is the Claimant's own unjustified delay in bringing the application.
12. The Claimant says that unless the reconsideration is heard and the Tribunal's decision overturned, it will minimise the prospects of the Solicitors Regulation Authority (SRA) reconsidering its decision to rebuke her. The Tribunal has read the decisions of the Adjudicator and Adjudication Panel of the SRA. Whilst these decisions may have been influenced by the Tribunal's decision they were by no means based solely upon it and they have been reviewed and upheld by the Solicitors Disciplinary Tribunal. In any event, the decision on whether to reconsider the decision to rebuke her is a matter for the SRA, not this Tribunal.

13. The Claimant also asserts that the Tribunal's Judgment will impede her ability effectively to defend the civil action the Respondent is now bringing against her. In support of this argument she relies on a witness statement from Ms Moses, solicitor for the Respondent in relation to its High Court claim, which she appears to have been sent in or around the week beginning 20 January 2020. The witness statement appears to have been filed in response to an application by the other defendant to the civil proceedings, the Claimant's former husband, for the claim to be struck out. The Claimant says that the witness statement indicates that the firm intends to rely on the Tribunal's Judgment in the context of the High Court proceedings, despite having told the EAT that it would not do so.
14. According to the EAT's decision, the Respondent told the EAT that there was no allegation in the pleading of the High Court claim that refers to or relies on the Tribunal proceedings. The Particulars of Claim in the High Court action, which the Claimant has provided, confirm that to be the case. The Respondent also told the EAT that it would not be arguing that any issue estoppel arose from the Tribunal's Judgment. None of Ms Moses's references to the Tribunal's Judgment in her witness statement establishes that the Respondent has moved from that position. As the High Court will have available to it the new documents that the Tribunal did not see and will be free to take its own view on the evidence, the Tribunal does not accept that the Claimant will be impeded in her ability to defend that claim. (In any event, the Claimant was aware that the Respondent was contemplating High Court proceedings at the time of the Tribunal's Hearing. If she was concerned about her position in any such proceedings, should they materialise, being prejudiced by the Tribunal's Judgment, there was nothing preventing her applying for a reconsideration or lodging an appeal, either at the time the Tribunal's Judgment was sent to her or, at the latest, when she received the new documents two years ago.)
15. The Claimant says that, in contrast, extending time for her application would cause "minimal" prejudice to the Respondent. The Tribunal does not accept that. The Respondent would need to spend time and money on responding to the application and attending the Hearing that the Claimant has requested, which would be unlikely to be completed in less than a day. The Tribunal also notes that, even if the application for reconsideration was allowed to proceed, was granted and the Tribunal's decision revoked, the Tribunal would almost certainly decide to stay the rehearing of the issue of remedy until the High Court proceedings had been concluded. There would therefore be significant ongoing costs for the Respondent in defending a Tribunal claim that it had every right to assume had been concluded years ago.

Summary and conclusions

16. In summary, the Tribunal does not accept that there is any good reason for the Claimant's delay in making her application for reconsideration. It does not accept that she will be substantially prejudiced by the Tribunal's decision not to extend

time for her application or, to the extent that she will, that that prejudice has been caused by anything other than her own unjustified delay. Allowing an application out of time would significantly prejudice the Respondent.

17. Taking all these matters into account, the Tribunal does not consider that it would be fair and just to allow this application for reconsideration to be made six years out of time and an extension of time is therefore refused. As a result, the application for reconsideration is also refused as having been made out of time.

Employment Judge Cox
Date: 20 March 2020