EMPLOYMENT TRIBUNALS

Claimant: Mrs B Schaefer

Respondent: UK Government

RECONSIDERATION JUDGMENT

The claimant's application for reconsideration is refused.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(1). The claimant's reconsideration application is refused because there is no reasonable prospect of the original decision being varied or revoked.

2. On 19 March 2019, at the end of a 1 day preliminary hearing dealing with preliminary issues, I [Employment Judge Camp] struck out the entire claim on the basis that it has no reasonable prospects of success. Reasons were given orally and the written record of the judgment, together with written reasons – requested by the claimant – were sent to the parties on 11 April 2019. I refer to the Judgment and Reasons.

3. On 18 April 2019, the claimant made what she described as an application for a review, which I have taken to be an application for reconsideration. Where practicable – and it is practicable here – any application for reconsideration must be considered by the Employment Judge who made the original decision, i.e., in this instance, by me.

4. In the claimant's arguments in support of the reconsideration application, I have been unable to discern any points of substance that go to the core of my decision. The core of my decision was the fact that I, an Employment Judge sitting in the employment tribunals, have no power to deal with the claim the claimant wishes to bring. The claimant's application does not really engage with that fact at all. I don't think there is anything in the claimant's other arguments, but even if there was, I would have to be satisfied that there was some prospect of the claimant's claim surviving a rehearing of the preliminary issues in order to entertain the reconsideration application at all.

5. In so far as I can make them out, the claimant's other arguments seem to be:

   5.1 it was unfair for the respondent to be permitted to rely on a skeleton argument that was only provided to the claimant on the morning of the hearing.

   The hearing started after twenty past 10. The claimant had had the skeleton argument for significantly more than the 15 minutes she suggests in her application. I checked with her at the start of the hearing whether she had had time to read it and she confirmed to me that she had. During the hearing she submitted that it should have been provided to her 7 days before the hearing, but I explained to her that that was not the case – that no order to that effect had been made and that it was normal in the tribunals for skeleton arguments and written submissions to be exchanged on the day.[1] In any event, any suggestion that she did not have enough time to read and digest the skeleton argument would only provide a potentially valid basis for the reconsideration application if it was accompanied by clear answers to the points made by the respondent in the skeleton argument; and it wasn't;

   5.2 the claimant criticises the language used in the decision, suggesting it shows bias against her and in favour of the respondent. All I can say in relation to that criticism is that I disagree and that I do not think her perception of bias is objectively based. My decision is firmly in the respondent's favour, but that is because I see the merits as being firmly in the respondent's favour;

   5.3 I am not entirely sure, but, possibly, she is criticising me for spending a lot of time at the hearing asking her questions so as better to understand her case. I was not cross-examining her on a witness statement – it was not that kind of hearing. Instead, I was trying to identify the claims she wants to make and what the legal basis of them is. I think I would not have been doing my job properly and would have been acting unfairly towards her had I done otherwise – had I just sat back and asked her for her oral submissions.

   When the claimant, in her application, refers to me not knowing the answers to my own questions, I think she is probably referring to me saying something to the effect that I wanted to know what her case and the legal basis for it was because I did not know myself; in particular that I was not aware of the tribunal having the power to do what she is wanting it to

[1] She was misled by something in the standard notice of hearing: "*If you wish to rely on written representations at the hearing they must be sent to the Tribunal and to all other parties not less than 7 days before the hearing.*" Although I entirely accept this would not be clear to most people in the claimant's situation, that sentence reflects rule 42, which states, "*The Tribunal shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 7 days before the hearing.*" In other words, your written representations will be considered, whether you attend the hearing or not, if you deliver them at least 7 days beforehand; but it does not follow that they definitely won't be considered if you miss that deadline.

do and that I therefore needed her to tell me where she thought the tribunal got that power from;

5.4 the rest of the application largely consists of the claimant repeating points she made during the preliminary hearing, to the effect that there is new evidence (although how what she describes as new evidence helps her with the time limits issue she lost on in December 2011 has never been clear) and that previous the judicial decisions that have been made against her are wrong. I am afraid these points have become no stronger since the preliminary hearing.

6. On 30 April 2019, the claimant sent a further email to the tribunal enclosing some documents relating to the County Court proceedings. In short, none of those documents causes me to think that I might have got my decision wrong.

7. I note that the claimant has been emailing the respondent's barrister's chambers. She should not be doing this unless the respondent has asked her to, which seems unlikely. A barrister is an independent contractor who carries out particular tasks on behalf of her client on the instructions of solicitors. The respondent's solicitors in the present case are the Government Legal Department. They and only they should be copied into the claimant's correspondence with the employment tribunal (again, unless they and/or the tribunal asks them to do otherwise).

8. Finally, the claimant mentions an intention to appeal. Any appeal is a matter between her, the respondent, and the Employment Appeal Tribunal (EAT). I would have nothing to do with any appeal unless the EAT asked me to do something.

Employment Judge Camp

20 May 2019

Sent to the parties on:

For the Tribunal: