



EMPLOYMENT TRIBUNALS

Claimant: Mr. B Randall
Respondent: Trent College Ltd
Heard at: Nottingham (In Chambers)
On: 1st June 2021
Before: Employment Judge Heap (Sitting Alone)

Representation

Claimants: Written representations considered
Respondents: Written representations considered

JUDGMENT ON RECONSIDERATION

The Claimant's application for Reconsideration is granted. The decision to refuse the amendment application made on 25th May 2021 is revoked and the application to amend the claim dated 15th March 2021 is granted.

The fresh complaints of unfair dismissal and victimisation will be heard separately, by the same Tribunal panel if practicable, and not at the hearing commencing on 14th June 2021.

The Respondent is Ordered to file an Amended ET3 Response to the complaints of unfair dismissal and victimisation within 28 days of the date that this Judgment is sent to the parties.

REASONS

BACKGROUND & THE ISSUES

1. At a Preliminary hearing held on 25th May 2021 I refused an application made on behalf of the Claimant to consolidate a new Claim Form which had been issued or, alternatively, to amend the claim to include additional complaints of unfair dismissal and victimisation which featured in that Claim Form as "new" complaints.
2. The Claimant has made an application for reconsideration in respect of the refusal of the amendment application. I have considered that application

along with the representations made by the Respondent and the Claimant's comments thereon. Whilst I do not set out their respective positions in detail, they may be assured that I have considered all that they have said.

3. The reason for the reconsideration application is on the basis that since the original decision was made it has come to light that the Claimant's second Claim Form has not been validly presented because it was not presented in accordance with the Presidential Practice Direction – Presentation of Claims England & Wales. In this regard, it was only presented by email.
4. Now that that has come to light, the Claimant would have to present a fresh Claim Form – validly – to deal with the additional claims of victimisation and unfair dismissal. Those claims would now be out of time and on the face of it there would be no jurisdiction to entertain them.
5. It is necessary to set out the history of the application to amend. That was made by the Claimant on 15th March 2021. There was a delay in the Tribunal being able to deal with that application. It was referred to me almost a month later on 14th April 2021 but there was then a further delay in my directions being actioned until 1st May 2021. Those directions set out that an amended ET3 Response would be required and it did not appear feasible by any stretch that the claim would be ready for hearing as listed to commence on 14th June 2021. I required the Claimant to confirm if his position as to a delay of the hearing, which would be well into 2022, given that he had made plain when he made an earlier adjournment application that he did not want the hearing to be postponed past June 2021. I otherwise required him to say how it was said that the claim could be trial ready.
6. As a result of the delay in actioning my directions, the Claimant had in fact, on 28th April 2021 presented a further Claim Form and set out a proposed timetable for preparation for the hearing and for all complaints to be dealt with together. Unfortunately, that Claim Form was not referred to a Judge. If it had been then it would have been promptly rejected.
7. On 4th May 2021 the Claimant replied to my directions referring to their proposed timetable and requesting that the Tribunal "do everything possible to preserve the June hearing". The Claimant wrote again on 20th May chasing matters up. I did not see any of those items of correspondence until 24th May 2021 when I received the file to prepare for the Preliminary hearing at which I refused the amendment application.
8. I have determined the reconsideration application made by the Claimants on the papers because it is neither necessary nor proportionate to hold a hearing to deal with the matter and I am now on leave or otherwise engaged until the commencement of the hearing.

THE LAW

9. The procedure and basis for applications for Reconsideration is provided for by Rules 70 to 73 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Under the provisions of Rule 70, a Judgment will only be reconsidered where it is 'necessary in the interests of justice to do so' and a

Tribunal dealing with the question of Reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly'. A Tribunal should also be guided by the common law principles of natural justice and fairness when dealing with applications of this kind.

10. The wording 'necessary in the interests of justice' in Rule 70 allows Employment Tribunals a broad discretion to determine whether Reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised having regard not only to the interests of the party seeking the review or Reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation (see **Outasight VB Ltd v Brown 2015 ICR D11, EAT**).

CONCLUSIONS

11. I am satisfied that I should reconsider my decision to refuse the amendment application and that I should revoke the refusal and grant the amendment in the terms sought on 15th March 2021. Before reaching that decision I have carefully considered the representations of both parties.
12. My reasons for granting the amendment application are as follows:
 - a. There has been significant delay in the Tribunal actioning the Claimant's amendment application. Had that been dealt with more promptly and referred earlier – i.e. in March 2021 – there is every chance that I might have granted it as there would still have been time to prepare and retain and possibly extend the existing listing. By the time that the application was referred and actioned, that was no longer possible;
 - b. The Tribunal failed to refer the second Claim Form to a Judge. Had that happened, the Claimant should have promptly been made aware that that claim was being rejected and he would have had time to validly present it;
 - c. If the Claimant now has to present a further Claim Form the complaints will be out of time. The Respondent accepts – and I agree – that he would have a good argument that time should be extended for the complaints of victimisation under the just and equitable principles. I similarly agree that it is less likely that that would be the case for the unfair dismissal claim where the reasonable practicability test would apply. I consider that that would cause significant prejudice and injustice to the Claimant given that his amendment application was made well within time and in light of the Tribunal's delay in dealing with it;
 - d. If the Claimant has to present a further Claim Form there will need to be an open Preliminary hearing to determine the issue of jurisdiction. That will come at an additional time and cost to both parties and is not in accordance with the overriding objective where there was an extant and in time amendment application; and

- e. The Claimant has raised a valid alternative to postponing the hearing which was not previously raised, which is to have off the victimisation and unfair dismissal complaints to be heard at a later date. If the amendment is granted the Respondent does not object to that course. That will allow the parties time to prepare and not place the existing listing at risk. If that had been raised on 25th May 2021 then I would have granted the amendment application.
13. For all of those reasons I consider that it is in the interests of justice to revoke my decision to refuse the amendment and to instead grant it. The claim is therefore amended to include the complaints of victimisation and unfair dismissal contained in the Claimant's application of 15th March 2021.

Employment Judge Heap

Date: 1st June 2021

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