



EMPLOYMENT TRIBUNALS

Claimant: Dr S Rifet

Respondent: University of Bradford

JUDGMENT

The claimant's application dated **22 July 2022** for reconsideration of the judgment which was sent to the parties on **28 June 2022** is refused.

REASONS

1. The claimant brought complaints of sex, race, maternity and disability discrimination (**the Complaints**). As the last allegedly discriminatory act occurred in July 2020, the claimant's claim was submitted approximately five months out of time.
2. The question of whether or not it would be just and equitable to extend time (assuming for those purposes that the last act, which was alleged to have occurred in July 2020, was discriminatory) was considered at a preliminary hearing on 28 April 2022.
3. On 28 June 2022 the Tribunal promulgated a reserved judgment with reasons in respect of the question of whether or not it would be just and equitable to extend time (**the Judgment**). The judgment of the Tribunal was that it was not just and equitable to extend time to vest the Tribunal with jurisdiction, and that the Tribunal had no jurisdiction to consider the claim.
4. On 14 July 2022, the Tribunal received an application for an extension of time to submit a reconsideration request.
5. On 20 July 2022 the Tribunal granted an extension of time of 10 days to 22 July 2022, for the claimant to submit a reconsideration request.
6. On 22 July 2022, the Tribunal received an application from the claimant for reconsideration of the Judgment.

7. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on the Tribunal's own initiative or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.
8. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice. This does not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly, and the Tribunal should be guided by the common law principles of natural justice and fairness.
9. Rule 70 provides the Tribunal with a general power to reconsider any judgment where necessary in the interests of justice to do so. A judgment is defined in Rule 1(3)(b) as a decision made at any stage of the proceedings which (amongst other things) finally determines the claim. It is not open to a party to seek reconsideration of the reasons for the judgment as opposed to the judgment itself.
10. Tribunals have a broad discretion but that must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and the public interest in the finality of litigation (**Outsight VB Ltd v Brown 2015 ICR D11 EAT**).
11. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties, or if a request for written reasons was made, within 14 days of the date the written reasons were sent out, if later. In this case, the Judgment was promulgated on 28 June 2022. The deadline for submitting a reconsideration request was extended from 12 July 2022 to 22 July 2022. It follows that the claimant made the reconsideration application in time. The claimant also complied with the procedural requirement to copy the application to the respondent's solicitor. The Tribunal therefore has jurisdiction to consider the reconsideration application.
12. Rule 72 of the 2013 rules sets out the procedure that an Employment Tribunal must follow upon receipt of an application for reconsideration. Firstly, the application is, where possible, put before the Employment Judge who decided the case. If the Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application will be refused and the Tribunal will inform the parties accordingly.
13. If the application is not refused, the Tribunal will send a notice to the parties setting a time limit for any response to the application by the other parties, and seeking the parties' views on whether the application can be determined without a hearing. The matter will then proceed to a hearing unless the Employment

Judge considers – having regard to any response to the application – that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing, the parties shall be given a reasonable opportunity to make further written representations.

14. The procedure does not allow for the Employment Judge to decide that a hearing is necessary before they take the decision under Rule 72(1) as to whether there is no reasonable prospect of the original decision being varied or revoked. This aspect of the procedure provides an important protection for the party opposing the application, in that the other party should not be put to the time and expense involved in responding to the application if the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked.
15. The claimant says that the Judgment should be reconsidered because:
 - 15.1 The claimant may not have made it clear in her arguments at the preliminary hearing that the last act was alleged to have occurred in September 2020 and not July 2020;
 - 15.2 Although the claimant's child's health had improved by September 2020, the claimant had just experienced a very difficult time in her life, and it was reasonable to expect some recovery time;
 - 15.3 The Judgment does not take into account the claimant's health issues owing to her physical disabilities which affected her daily living and mobility;
 - 15.4 The claimant experienced endless struggles in receiving a diagnosis and treatment for her child. A diagnosis in respect of her child's breathing obstruction was not made until her child was 16 months old, and her child's paediatrician did not recognise that her child needed antibiotics to prevent repeated hospitalisations until December 2021;
 - 15.5 The respondent gave the claimant a deadline of early November 2020 to submit a skeleton argument in relation to her grievance, however the claimant was unable to submit her skeleton argument on time, and did not submit it until December 2020. This indicates that the claimant was not mentally or physically able to progress a Tribunal claim;
 - 15.6 Although the claimant has an academic background and research expertise, she is a human and was in survival mode;
 - 15.7 The claimant has not pursued her research interests since 2016, and was only able to cope with other academic responsibilities, such as administration and teaching;
 - 15.8 This had been the most challenging time in the claimant's life. She had to cope with being a first time mother during a pandemic, her child was unwell, and she had a physical disabilities and mental health issues;
 - 15.9 The witnesses the respondent says have left have attempted on numerous occasions to be involved with the Tribunal hearing, however the respondent has refused to allow them to be involved;
 - 15.10 The 164 page grievance investigation report provides comprehensive details, including quotes from interviews;
 - 15.11 When the claimant said she had been well enough to submit a claim from September 2020 onwards if she had been aware of her rights, she meant that is she had been aware of her rights she would have submitted the document that she submitted internally for her grievance, which would have incurred a delay, as the grievance document was not submitted to

the respondent until December 2020. The claimant did not mean she would have been able to create something new.

- 15.12 Although the claimant did attempt to get advice from the trade union, her attempts were unsuccessful.
16. Employment Judge Tegerdine is satisfied that she fully considered the documents which were put before her by the parties at the hearing on 28 April 2022, and that she understood, and gave proper consideration to the evidence and representations which were put before her at that hearing. Employment Judge Tegerdine gave the claimant the opportunity to explain the circumstances which lead to the Complaints being submitted out of time, and is satisfied that she understood the evidence and representations which were made by the claimant.
17. The Tribunal reached its conclusions based on the documents which were presented to the Tribunal by the parties for the purpose of the hearing, the oral and written evidence, and the submissions which were made at the hearing.
18. The claimant says that the reasons for the Judgement miss the ongoing health issues that the claimant experiences, owing to her physical disabilities. The claimant says details of these were provided in her witness statement of February 2022, and were also within the document which was at page 211 – 214 of the Bundle. However, the claimant does not say in the 15 page witness statement which she provided for the preliminary hearing that any physical disabilities were a factor in the Complaints being submitted out of time, and when the claimant was asked to explain the reasons which led to the Complaints being submitted out of time while she was giving her oral evidence, she gave a number of reasons, but did not suggest that any physical disabilities had been a factor.
19. As the claimant did not suggest in her written or oral evidence that her physical disabilities were a relevant consideration to the question of whether it was just and equitable to extend time, and there was no evidence to suggest that the claimant's physical disabilities had contributed to the delay in the Complaints being submitted, the claimant's physical disabilities were not taken into account.
20. The claimant says in her reconsideration application that her attempts to get advice for the trade union were unsuccessful, however the claimant did not say this at the preliminary hearing, and said in her written and oral evidence for the preliminary hearing that she had had some help from the trade union.
21. As part of the claimant's reconsideration application, the claimant has produced two letters which the claimant now asks the Tribunal to consider. However, the claimant could have presented these documents to the Tribunal for consideration at the hearing on 28 April 2022, which she did not do. The Tribunal is satisfied that the claimant had the opportunity to present these documents to the Tribunal at the hearing.
22. It is not in the interests of justice that the claimant should be given a second bite of the cherry simply because she failed to adduce all the information in support of his application at the original hearing. A reconsideration application is not an opportunity for the parties to re-argue their case, and a party's failure to raise a

particular point or put certain documents before the Tribunal as evidence does not normally constitute grounds for review.

23. Having regard not only to the interests of the claimant, but also to the respondent's interests and the public interest requirement that there should, so far as possible, be finality of litigation, nothing the claimant says in the reconsideration application persuades the Tribunal that there is any reasonable prospect of the claimant prevailing upon the Tribunal at a reconsideration hearing that the Tribunal's Judgment was incorrect.
24. The Tribunal is therefore satisfied that there is no reasonable prospect of the Judgment or any part of it being varied or revoked. The reconsideration application is therefore refused.

Employment Judge Tegerdine

Date 5 September 2022