EMPLOYMENT TRIBUNALS

Claimant: Mrs Tolseeamah Veeramundar

Respondent: National Westminster Bank Plc

JUDGMENT

The claimant's submitted a claim form, with attachment, to the tribunal service on or around 20 December 2021.

To the extent that those documents can be seen as an application for reconsideration of the judgment sent to the parties on **25 February 2021**, it was not received within the time limit specified in Rule 71 of the Employment Tribunals Rules of Procedure and it is not in the interests of justice to extend time.

Had the documents been treated as a valid application for reconsideration of the judgment, it would have been refused in accordance with Rule 72(1), as the contents demonstrate no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

> **70. Principles**
> A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
>
> **71. Application**
> Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
>
> **72. Process**
> (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked(including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), 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. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

4. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

5. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the new version of the rules, it had not been necessary to repeat the other specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the "interests of justice" grounds.

6. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

The Claimant's December 2021 documents

7. The Claimant sent a claim form to the tribunal. As per my case management decision sent separately, I decided that the claim form would not be rejected under Rule 12. It has been given case number 3323716/2021, and seems –

arguably - to relate (in part, at least) to a "detrimental reference". Future case management decisions may be needed in that claim in order to decide precisely what the claims and issues are.

8. However, the attachment sent with the claim form described various historic matters, and included the sentence:

> I request the Employment Tribunal to make use of its discretionary power to reopen my claim for unfair dismissal.

9. That appears to be a reference to case number 3306574/2020. The Tribunal's paper file has been destroyed, and I therefore cannot directly comment on whether (as the Claimant suggests) that claim did include a claim for unfair dismissal. However, case number 3306574/2020 appears to be the only claim (prior to December 2021) by this claimant against this respondent. That claim was the subject of a dismissal judgment which said, in full:

> The proceedings are dismissed following a withdrawal of the claim by the claimant.

10. According to Tribunal records, that judgment was signed by me on 5 January 2021 and sent to parties on 25 February 2021. I have no recollection of the documents that were on the file at the time.

11. In any event, the Claimant states (in the December 2021 document), referring to a dismissal which she says occurred on 18 December 2019:

> I only got to know the real reason of my dismissal after reading the ground of resistance from the claim of unfair dismissal that I had put against Natwest Bank PLC back in October 2020.

12. She goes on to state that she had a solicitor at the time, and she asserts that she gave that solicitor instructions to write to the Respondent with an explanation of why – according to the Claimant – this (alleged) dismissal reason was based on an incorrect interpretation of the true facts. [It is unclear whether the Claimant was intending to assert that the explanation was one that she had given to the Respondent pre-dismissal or not, but that does not matter to the point at hand.] She states:

> He refused due to lack of knowledge and efficiency and advised me wrongly to withdraw the case Instead from Tribunal. He made me agree to a one sided agreement where there an agreement about my reference was refused.
>
> The prejudice caused by the decision of Natwest did not stop with the withdrawal of my claim in the Employment Tribunal but it is rather on going and causing significant disturbance and financial loss in my life.

13. If a party seeks reconsideration of a judgment, then Rule 71 specifically states that the written application must be copied to all the other parties. As far as I am aware, the Claimant did not send the documents, in December 2021, directly to the Respondent.

14. The mere fact that the Claimant did not expressly use the word "reconsider" (or similar), or refer to the relevant rules, would not, in itself, prevent the documents being treated as an application made under Rule 71. The

documents do not, in express terms, refer to the judgment at all. However, I take into account that the Claimant is a litigant in person. By implication, her request that the Tribunal "reopen" her previous claim must mean that she is seeking that the dismissal judgment be reconsidered and revoked.

15. Since judgment was sent on 25 February 2021, the 14 day time limit expired on Saturday 11 March 2021. Therefore, the documents submitted in December 2021 were around 9 months out of time.

16. Under Rule 5, I have the power to "extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired." This is an exercise of judicial discretion that should be exercised in accordance with Rule 2, and I must decide whether, in all the circumstances, it is in the interests of justice to extend time.

17. In this case, I note that the Claimant – according to her own December 2021 document – had legal advice in relation to the claim. She does not comment on when she saw the dismissal judgment. She does not mention that judgment at all. The document was sent (as far as I am aware) to her solicitors, rather than directly to her. However, and in any event, the Claimant – as per her own comments in the December 2021 document – knew that the claim was to be withdrawn, and knew it had been withdrawn, and knew that it had been withdrawn in circumstances in which the Respondent had not agreed to provide a reference.

18. The Claimant's December 2021 document gives no suggested reasons, expressly or by implication, that, because of a delay in any information being sent to her, a reconsideration request could not have been submitted by 11 March 2021. On the contrary, although she asserts that she had not necessarily been particularly happy about withdrawing the claim, my finding is that she makes clear that she had not been intending to seek to change her mind about withdrawal (or ask for reconsideration of the dismissal judgment) prior to 23 June 2021.

19. She asserts that on 23 June 2021, she lost a job (or job opportunity) and she blames the Respondent (and the contents of an alleged reference) for that. She then did not present the new claim form to the Tribunal (or any other request for reconsideration of the judgment in 3306574/2020) for a further five months.

20. It is unfortunate that there was a delay (from December 2021 to 19 April 2023) in this matter being brought to my attention. I take into account that it is possible (and indeed likely) that the tribunal file had not been destroyed by December 2021 (since there is a 12 month retention policy). That being said, the lateness of the Claimant's application (being towards the end, rather than the beginning, of the 12 month period immediately following final judgment) is a contributory factor to the fact that the application is being decided after the file has been destroyed.

21. I do assume that, if the application otherwise had merit, it would be possible to obtain copies of the claim form, response form, and withdrawal letter from the parties.

22. I have not sought the views of the Respondent about whether it considers itself to be prejudiced by the delay from March 2021 to December 2021 in the Claimant seeking a reconsideration. The Respondent's views on the merits, or otherwise, of the application would only be necessary if I decided to extend time, and if I decided not to dismiss the application as having no reasonable prospects of success. However, there would potentially be some prejudice to the Respondent if I decided to extend time. Firstly, there would be the prejudice caused by the 9 month delay to December 2021; secondly, there would be the prejudice caused by the fact that the Claimant did not copy the application to the Respondent in December 2021.

23. My decision, therefore, is that to the extent (if at all) that the Claimant intended the December 2021 documents to be an application for reconsideration, that application is out of time, and it is not in the interests of justice for time to be extended.

24. For that reason, the decision dismissing that claim upon withdrawal, is not varied or revoked.

Merits of application

25. For completeness, I have considered the contents of the document any way, even though, for the reasons stated above, I am not treating it as a valid application for reconsideration.

26. Even had these arguments been raised by a valid application, made within the time limit, and copied to all other parties, I would have refused the application under Rule 72(1), because it would have had no reasonable prospects of success. My reasons for deciding this are as follows.

27. Rules 51 and 52 read as follows:

> **51. End of claim**
> Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.
>
> **52. Dismissal following withdrawal**
> Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—
> (a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or
> (b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

28. Under Rule 51, the judge must simply make a finding of fact as to whether or not the claimant has informed the tribunal that the claim (or part of it) is withdrawn. If so, that means that Rule 51 has automatically operated to bring the claim to an end from the point at which the Claimant so informed the

tribunal.

29. The discretionary part of the decision is under Rule 52, which requires a decision about whether a dismissal judgment should be issued. A decision to decline to issue such a judgment does not mean that the claim continues (because, as a result of Rule 51, the claim has already come to an end).

30. The Claimant does not assert that the Tribunal misinterpreted any communication. She expressly acknowledges that, following discussions between her and her solicitor, the claim was withdrawn. By implication, there were discussions between the parties, and possibly some sort of agreement, before the withdrawal, but that is a separate point. The relevant point is that she admits it was withdrawn. Therefore, the dismissal judgment was not based on an incorrect finding of fact.

31. Furthermore, it is not alleged that, at the time of the withdrawal, there was a wish (expressed in the withdrawal letter, or at all) to bring a further claim. In any event, on her own account, she had already presented a claim for unfair dismissal. The December 2021 documents do not state or imply that she is now seeking to bring a new, different claim. Rather that she simply wishes to "reopen" the same complaints and arguments that were previously included in case number 3306574/2020.

32. The documents do not allege that the Claimant has, since withdrawing the claim, come into possession of any relevant information that she lacked at the time of the withdrawal. She had tried to persuade her solicitor to put forward a particular argument, and she knew the solicitor had not done so. She knew that she had not secured an agreement from the Respondent about references. (It is not clear whether a request to the Respondent was made and was refused, or whether she believes her solicitor failed to ask. Either way, the December 2021 document makes clear that she knew, prior to the withdrawal, that there was no agreed reference.)

33. There is a public interest in judgments being final. Nothing that the Claimant says has any reasonable prospects of showing a good enough reason to revoke the judgment, or for claim 3306574/2020 to continue.

Employment Judge Quill

Date: 21 April 2023

JUDGMENT SENT TO THE PARTIES ON

21 April 2023

FOR THE TRIBUNAL OFFICE