



EMPLOYMENT TRIBUNALS

Claimant: Ms S Child
Respondent Crown Prosecution Service

PRELIMINARY HEARING

Heard at: Manchester, by video platform **On:** 20 January 2022
Before: Employment Judge Batten

Representatives

For the claimant: In person
For the respondent: L Amartey, Counsel

JUDGMENT ON A RECONSIDERATION

The claimant's application dated 30 September 2021 for reconsideration of the Judgment striking out the complaint of harassment for failure to pay a deposit as ordered, sent to the parties on 21 September 2021 is refused.

REASONS

1. The claimant made an application for reconsideration of the Judgment striking out her complaint of harassment for failure to pay a deposit as ordered by email which was received by the Tribunal on 30 September 2021. I signed the Judgment in issue.

2. I directed that the claimant's application be considered at this preliminary hearing which was already listed to consider (1) the respondent's applications for strike out of the discrimination complaints for being out of time and for having no reasonable prospects of success and (2) for further case management.
3. At this hearing, I dealt with the claimant's application first. I heard from the claimant and from Counsel for the respondent. I have taken the contents of the application email into account.
4. The final hearing of the claim is listed on 7 – 11 March 2022, for 5 days.

Rules of Procedure

5. Rule 72(2) of the 2013 Rules of Procedure provides that my original decision shall be reconsidered at a hearing unless if I consider there is no reasonable prospect of the original decision being varied or revoked. I did not consider that the application had no reasonable prospects of success and so it was listed to be dealt with at this hearing.
6. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could have a material bearing on the outcome.
7. Rule 39 empowers the Tribunal to make an order requiring a party to pay a deposit not exceeding £1,000.00 as a condition of continuing to advance an allegation which the Tribunal considers has little reasonable prospects of success. A date for payment is specified in the deposit order.
8. Rule 39(4) provides that if the paying party fails to pay the deposit by the date specified in the order, the allegation to which the deposit relates shall be struck out.

Relevant facts

9. The claimant was ordered to pay a deposit of £500.00 pursuant to a deposit order made by the Tribunal at a preliminary hearing on 18 June 2021. The deposit order was sent to the claimant on 28 July 2021. The date specified for payment was "*within 3 weeks*" of the date on which the deposit order was sent to the parties. Payment was therefore due by no later than 18 August 2021.
10. On 18 August 2021 at 17:04, the claimant sent an email to the Tribunal to say that she had to pay a deposit by that day and seeking information on

how to pay and/or an online link for payment. The Tribunal offices close at 17:00 hours and so the claimant's email did not come to the attention of any of the administrative staff until the next day at the earliest.

11. There is no record of any prior or further contact by the claimant with the Tribunal in an effort to pay the deposit.

The application

12. The claimant's application for reconsideration states that she was having trouble trying to pay the deposit. The claimant stated that she had made a telephone call to the Tribunal and had received an automated reply saying that all staff were busy. The claimant also says that she had made 4 further telephone calls to the Tribunal, and that she had tried to pay online. The claimant contended that she had actively tried to comply with the deposit order and she requested that the decision to strike out part of her claim for non-compliance be rescinded.
13. In submissions, the claimant told me that she had tried to make payment the day before the deposit order was due and that she had sent an email to the Tribunal, asking for somebody to get in touch to help her. However, the claimant was unable to produce any evidence of any actions taken on the day before the payment was due, for example records of telephone calls and/or emails.
14. The only evidence before the Tribunal was the email which the claimant sent at 17:04 on the final payment day. On a balance of probabilities, I concluded from the content of that email that 17:04 was the time at which the claimant first contacted the Tribunal. It was at the eleventh hour. I consider that, by leaving things so late, the claimant ran the risk that if anything went wrong, as it did, there was little or no time available to remedy the situation.
15. The claimant was given at least 3 weeks in which to pay the deposit as ordered. However, she had been aware of the deposit order from as early as 18 June 2021 when she attended the case management preliminary hearing before Employment Judge Horne, who made the order and explained matters to the claimant.
16. In the above circumstances, I am satisfied that the Tribunal has acted correctly in accordance with Rule 39(4). The claimant failed to pay the deposit order by the date specified and the allegation to which it relates, the harassment complaint, has been struck out. In those circumstances the Tribunal has no discretion about the matter. Further, the claimant has given no valid reason at this hearing why I should revisit the strike-out under the Tribunal's general powers to vary suspend or set aside the decision.

Conclusion

17. Having considered all the points made by the claimant I am satisfied that there are no grounds to revoke the strike-out decision. The application for reconsideration is refused.

Employment Judge Batten
Date: 20 January 2022

JUDGMENT SENT TO THE PARTIES ON:

3 February 2022

FOR THE TRIBUNAL OFFICE