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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108018/2021

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Reconsideration Application under Rule 71 (in chambers)
on 8 December 2021

Employment Judge A Strain

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Mr David Millar

Claimant
Mr S Smart

Liberty Steel Dalzell Limited

Respondent
Represented by:
Mr D Godfrey

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Employment Tribunal refuses the claimant's application for reconsideration of the Employment Tribunal Judgment made on 2 August 2021

REASONS

Background

Application for reconsideration

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1. The claimant's representative, Mr Smart presented an application for reconsideration of the Tribunal's judgment dated 2 August 2021 on 15 August 2021.
2. The basis of the application was that following the cases of *Marks & Spencer Plc v William Ryan [2005] IRLR 562* · *Pora v Cape Industrial Services Ltd*

UK/EAT/0253/18 the claimant suffered from a severe depressive illness which severely limited his capabilities and resulted in medication of significant strength being prescribed to both alleviate and control the symptoms and that the illness suffered by Mr Millar affected his ability to fully understand the situation and prevented his claim from being presented in time.

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Respondent's response

3. The respondent responded to the application by email of 2 September 2021. The substance of the response was as follows:

a. The single ground on which the application is made – that the Claimant was prevented by illness from lodging his claim within the primary time limit – was extensively canvassed at the original hearing. No new information is presented now in relation to that. The Employment Judge considered this submission but rejected it.

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b. One of the reasons the Employment Judge rejected it was that no documentary evidence was offered in support of it. That remains the position.

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c. The Claimant's alleged illness was not the only reason why the Employment Judge struck the claim out. Therefore even if the Tribunal were now to accept that at times the Claimant was too ill to submit his claim that would not lead to a different outcome.

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d. The authorities cited on behalf of the Claimant in his application were referred to in the judgment and have therefore clearly been taken into account.

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e. The underlying claim has little if any merit so even if the Tribunal were minded to allow it to proceed it would almost certainly be struck out on its merits.

Discussion and Decision

4. The Tribunal considered the application for reconsideration and the response.
5. The tribunal had considered and applied the approach set out in **Marks & Spencer Plc v William-Ryan [2005] IRLR 562** and **Pora v Cape Industrial Services Ltd. UKEAT/0253/18** in the original hearing and referred to these cases in its Judgment..
6. The Tribunal considered the evidence of the claimant regarding his anxiety and depression. The tribunal did not accept there was any credible evidence that the claimant's anxiety and depression played any part in preventing him from submitting his claim. Further, by the claimant's own evidence the claim had been submitted and ACAS were dealing with it on his behalf.
7. The claimant's application for reconsideration raises nothing new and presents no new evidence. The matters referred to in the application were all considered and dealt with by the Tribunal at the original hearing.
8. The Tribunal accordingly refuses the application for reconsideration

Employment Judge: Alan Strain
Date of Judgment: 09 December 2021
Entered in register: 14 December 2021
and copied to parties