



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms R Miller

AND

North East Dance Company (UK) Ltd

Heard at: North Shields

On: 28 July 2017

Before: Employment Judge Shepherd

JUDGMENT ON APPLICATION FOR A RECONSIDERATION

The application for a reconsideration of the judgment sent the parties on 22 May 2017 is refused.

REASONS

1. A judgment was sent to the parties on 22 May 2017 following a hearing on 19 May 2017.
2. On 8 June 2017 the respondent applied for a reconsideration of the judgment. There was a delay in the referral of the application to me as there were issues in respect of the payment of the Employment Tribunal Fees.
3. I have considered the application for a reconsideration pursuant to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Schedule 1 provides as follows:

“70 A tribunal may, either on its own initiative (which may reflect or request from the employment appeal tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interest 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 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 is 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 (1) An employment judge shall consider any application made under rule 71. If the judge considers 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 or notice provided under paragraph (1), that a hearing is not necessary in the interest of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representation".

4. Reasons were provided at the oral hearing on 19 May 2017. There has been no request for written reasons. However, I now provide the written reasons for the judgment given on that day.

Reasons for the judgment given on 19 May 2017

1. This hearing was listed for one hour on 19 May 2017. On 18 May 2017 Emma Walker, on behalf of the respondent wrote to the Tribunal indicating that the claimant had failed to comply with an order that she should provide, in writing, what remedy the Tribunal is asked to award and this had been ordered to be received by the tribunal office by 20 April 2017.

2. The Tribunal wrote to the respondent on 18 May 2017 indicating that it had been directed by Employment Judge Reed that the issue would be dealt with at the start of the hearing. This letter was emailed to the respondent on 18 May 2017.

3. There was no attendance at this hearing on behalf of the respondent and the Employment Tribunal clerk telephoned Ms Walker and left a message. Ms Walker, on behalf of the respondent telephoned the Tribunal office indicating that she was not going to attend as she did not have a solicitor.

4. Notice of hearing had been sent to the respondent on 23 March 2017. The respondent having been told that the issue she raised would be dealt with at the start of the hearing and, in those circumstances, the hearing went ahead with no attendance on behalf of the respondent.

5. I heard evidence from Rebecca Miller, the claimant and I considered the contents of the Employment Tribunal file including the response from the respondent. The claimant was employed by the respondent from 1 November 2014. She handed her notice in on 8 November 2016 indicating that she would work for the respondent for the next 30 days, completing her employment on 8 December 2016.

6. The claimant's contract of employment provided for three months' notice to terminate her employment and it is also indicated that any breach of this clause may result in deductions from her salary.

7. The claimant worked during November 2016 and until 22 December 2016. The claimant had indicated that she would work until February 2017. However, due to failure by the respondent to pay her wages and provide payslips, she did not return after the Christmas and New Year break in January 2017.

8. The respondent stated in the response that she was unable to find suitable cover and was forced to return from maternity leave early and take on the dance classes herself. She provided the calculation as to the hours she had to work.

9. The claimant worked in November 2016 and December 2016 and was not paid for those hours. Her 18th birthday was on 15 October 2016 and all the hours for which she had not been paid were over the age of 18. The claimant should have been paid the National Minimum Wage for 18 to 20 year olds which was £5.55 per hour. She gave evidence that she worked 38.25 hours in November and 24 hours in December. This provides a total of 62.25 hours at £5.55 – a total of £345.49.

10. Section 13 of the Employment Rights Act 1996 provides a right not to suffer unauthorised deductions as follows:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of deduction.”

11. There was no authority for the respondent to deduct claimant's wages and the respondent is ordered to pay the sum of £345.49.

5. The respondent's application for a reconsideration indicates that Ms Walker had not received a response to her email querying the remedy correspondence. However, that was sent to her on 18 May 2017 by email.

6. The application of reconsideration also states "I believe the claimant was in breach of employment contract by any means wish this to be considered by the Tribunal." The respondent has not made an employer's contract claim in its response. Any such claim would have been rejected as the claimant's claim is for unlawful deduction from wages.

7. There is no arguable response to that claim indicated by the respondent. There is no statutory provision or provision of the claimant's contract allowing for any such deduction and the claimant has not provided her consent in writing. The claimant was prepared to work during her notice period. However, the respondent was in repudiatory breach of contract by failing to pay outstanding wages.

8. I have considered the application. There was no authority to deduct claimant's wages in the circumstances and the application for reconsideration does not provide any indication of such authority.

9. There is no reasonable prospect of the judgment sent to the parties on 22 May 2017 being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

Date 28 July 2017

Sent to the parties on:

3 August 2017

For the Tribunal:

P Trewick