



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Mr L Shaw

AND

Stewart Inglis Industrial  
Painting Limited

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

The respondent's application for a reconsideration of the judgment on liability and remedy in favour of the claimant given at the end of the hearing on 14 August 2017 is refused. It is not in the interests of justice for there to be a reconsideration.

### REASONS

- 1 The Tribunal heard the claimant's claims of unfair dismissal, unauthorised deduction from wages and failure to pay accrued holiday pay at a contested hearing on 14 August 2017. At the end of that hearing judgment was delivered in favour of the claimant. The Tribunal found that the claimant had been unfairly dismissed and that the respondent had failed to pay him his accrued wages and accrued holiday pay. The respondent was ordered to pay a basic award of £8,800 for unfair dismissal, a compensatory award for unfair dismissal in the sum of £2,542, unpaid wages in the sum of £1,071 and accrued holiday pay in the sum of £1,285.20. The reasons were given to the parties at the conclusion of the hearing.
- 2 By letter dated 6 September 2017, the claimant applied for written reasons, which have now been provided.
- 3 By letter dated 1 September 2017, Mr Inglis on behalf of the respondent wrote to the Tribunal in the following terms:-

*"I wish to appeal against the judgment against my company."*

The Employment Tribunal replied by letter dated 12 September, explaining the difference between an "appeal" and an application for a "reconsideration".

4 By letter dated 5 September 2017, Mr Inglis replied stating:-

*"I request that you reconsider the judgment in light of my discovery, and proof, that Mr Shaw had planned to take my company and customers from me for many weeks/months."*

5 By further letter dated 6 September, Mr Inglis on behalf of the respondent submitted further grounds for his request for a reconsideration. A brief summary of those grounds is as follows:-

5.1 I have at no time stated that Mr Shaw has been made redundant and that there was work/jobs available for him to carry out. Mr Shaw was aware of my age and wanted me to retire and hand the business over to him. I was not ready to do this and I feel that this led to Mr Shaw's refusal to return to work.

5.2 For many years the company has carried out maintenance work for Simpsons Malt Limited and jobs had been tendered for and awarded to my company. I have recently found out that Mr Shaw was negotiating behind my back to obtain this work. He has been my trusted foreman for twenty years and he was aware that my company could not carry out works without him. I believe that his refusal to return to work was part of a plan designed to force me into giving up all works so that he could take on this work personally. I can prove that Mr Shaw planned for many weeks to take/steal my business and contracts from my company. He is presently at work on Simpsons Malt Limited site at Tweedmouth, Berwick, on projects previously agreed for my company to do.

5.3 Whilst he may have recorded dates to our meetings and letters, telephone conversations etc, Mr Shaw has lied in a court of law and also used Citizens Advice Services to his own greedy agenda.

5.4 I feel that Mr Shaw planned to start his own business but rather than doing this in an honest manner he is attempting to claim that I made him redundant in order to claim considerable compensation. Based on the current decision it would appear that he has successfully deceived the court.

5.5 Mr Shaw's claim for unfair dismissal is totally untrue (the other two men were paid off) Mr Shaw would not return to work. Unauthorised deductions – also fanciful and made up to extract more money. Mr Shaw and the other men were having days off with full pay continually through the year and in his case he would be off for his family, off to help grandmother, off for his motor bike racing injuries, off for funerals etc and many days each year. Only recently the other men too had days off both, Ian Aitchison and lastly Mr Ross Young who was off for his driving test – all with full pay. Accrued deductions, holiday pay etc for twenty years he has worked steadily and knows that we must work

like the farmer and make hay while the sun shines. This is industrial painting. We worked with what I thought, until now, was a happy relaxed and flexible work environment.

- 5.6 Mr Shaw has, for pure greed, finished my business of thirty five years and put four jobs to an end, abused the free legal team of Citizen Advice, lying to them and most evil of all he has lied to a court of law and he has grossly insulted my good name.
- 6 A principal issue at the liability hearing was whether or not the claimant resigned or had been dismissed by the respondent. There was a straightforward conflict on the evidence given by the claimant and Mr Inglis on behalf of the respondent. The Tribunal preferred the evidence of the claimant which was, in the main, purported by the documents in the bundle. The claimant made it clear that he was ready to return to work as soon as Mr Inglis informed him that there was work to be done. The Tribunal found that the claimant had never refused to return to work. When Mr Inglis wrote to the claimant, telling him that his absence from work was to be treated as his resignation, the claimant immediately replied in writing stating that he had not refused to return to work and had not resigned. The claimant made a formal appeal against Mr Inglis' decision. Mr Inglis neither replied nor arranged a hearing for the claimant's appeal.
- 7 Mr Inglis in his application for a reconsideration does not challenge that finding. He simply asserts that he believes that the claimant had for some time been planning to set up in his own business so that he could undertake work which had previously been carried out by the respondent. Mr Inglis asserts that the claimant is now carrying out work for Simpsons Malt, but does not produce any evidence to confirm that. Rather bizarrely he suggests that the Employment Tribunal should itself contact Simpsons Malt to enquire as to whether the claimant is undertaking that work. That of course is not the function of the Tribunal. It is for Mr Inglis on behalf of the respondent to produce any such evidence. He would then have to show that any such evidence was not available at the original hearing.
- 8 Even if what Mr Inglis says is correct, namely that the claimant is now undertaking work for Simpsons Malt, that does not impact upon the Tribunal's decision as to whether or not the claimant resigned or was dismissed. There is nothing in the application for a reconsideration which could possibly impact upon the decision made by the Tribunal that the claimant had been dismissed and had not resigned.
- 9 The Tribunal having found that the claimant was dismissed, it is then for the respondent to satisfy the Tribunal as to its reason for dismissing the claimant and that the reason given was a potentially fair reason under section 98 of the Employment Rights Act 1996. Having denied throughout that the claimant had been dismissed, Mr Inglis could not give any reason for the claimant's dismissal. That was why the dismissal was found to be unfair.

- 10 The claimant produced a schedule of loss, which was included in the bundle for the liability hearing. Mr Inglis did not challenge the calculation of the basic award, nor does he now do so. Mr Inglis did not challenge the calculation of the claimant's entitlement to a compensatory award or the calculation of accrued wages and accrued holiday pay. In his application for a reconsideration, he does not do so.
- 11 Under rules 70-72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. Prior to the introduction of the 2013 Rules, a party could apply for a reconsideration if the original decision was wrongly made as a result of an administrative error, if a party did not receive notice of the hearing, if the decision was made in the absence of a party, if new evidence had become available since the conclusion of the hearing, the existence of which could not have been reasonably known of at the time or that the interests of justice required it. Whilst those specific grounds have now been removed, there remain good guidelines to be considered when deciding whether the interests of justice require a reconsideration. The only point raised by Mr Inglis on behalf of the respondent which could possibly fall into one of those earlier grounds, is that he has discovered that the claimant is now undertaking work for Simpsons Malt, which work had previously been carried out by the respondent. What Mr Inglis does not say, is that the respondent has throughout the relevant period been in a position to undertake that work. In his evidence to the Tribunal at the main hearing, Mr Inglis stated that the company had ceased trading and was effectively insolvent. The claimant was the last of his employees to either leave or be dismissed. He has not suggested that there was any covenant or undertaking by the claimant not to seek work from previous customers of the respondent. Mr Inglis has not produced any evidence to show that the claimant was in breach of the implied term of trust and confidence of an employee, seeking to obtain contract work from the respondent's customers whilst he the claimant remained an employee. Mr Inglis challenges the honesty and integrity of the claimant, alleging that he has lied in his evidence to the Tribunal. He does not state what those lies were, nor does he state what was the true version of any disputed fact or event. It appears from his application for a reconsideration that Mr Inglis simply refuses to accept the findings of the Tribunal and seeks what can only be described as a "*second bite at the cherry*".
- 12 It is not generally in the interests of justice that parties to litigation should be given such a second opportunity simply because they have failed as a result of an oversight or a miscalculation in their litigation strategy, to adduce evidence which may have been available at the time. The interests of justice apply equally to both sides. The grounds set out in Mr Inglis' letters of application are lacking in detail and do not contain sufficient information to persuade the Tribunal that it is in the interests of justice for there to be a reconsideration.
- 13 The application for a reconsideration is refused.

**Employment Judge Johnson**

**Date 5 October 2017**

**JUDGMENT SENT TO THE PARTIES ON**

**5 October 2017**

**G Palmer  
FOR THE TRIBUNAL**