



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr D Paterek

Tesco Stores Limited

HELD AT Birmingham

ON 1st November 2017

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: Parties not in attendance

For the respondent: Parties not in attendance

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for a reconsideration of the Tribunal's judgment dated 11th August 2017 has no reasonable prospects of success and is refused.

REASONS

Background

1. The claimant brought a claim for unfair dismissal following his dismissal 1st December 2016.
2. A full merits hearing took place on 1st and 2nd June 2017 at which the claimant's claim for unfair dismissal succeeded. Following a

remedy hearing, which took place after the delivery of the liability judgment the remedy judgment was reserved and served on the parties on 14th August 2017 (“the Judgment”).

3. During the course of the remedy hearing the claimant indicated that he had not made any attempts to seek alternative employment following his dismissal as he had been in Slovakia since his dismissal and only came back for the hearing (paragraph 38 of the Judgment).

4. By an email dated 27th August 2017 the claimant made an application for a review of the Judgment, in particular paragraphs 44 and 45. The application for review was essentially on 2 main grounds as follows:

4.1 The claimant was of the view that it would take him 8 months to find another job on the basis that ordinarily it would take 6 months to find a job in his area of expertise. However, due to the fact that he had been dismissed it would take him an extra 2 months to find another job; and

4.2 The claimant was also of the view that the combined factors of his age, health, the fact that he was not English and he now had a dismissal on his record made it difficult for him to get a job and when he was. The claimant indicated that he had applied for a few jobs and contacted agencies but he did not know how to respond when asked why he had left his last job.

These submissions relate to paragraph 44 of the Judgment. No representations are made in relation to paragraph 45 of the Judgment which relates to the ACAS uplift.

5. On 11th September 2017 the respondent’s representatives were asked to provide their comments on the claimant’s application. Such comments were provided by the respondent on 19th September 2017. The respondent objected to the reconsideration application on the basis that (1) the claimant had the opportunity to make submissions in relation to remedy at the hearing and was allowed to do so; (2) in light of the claimant’s evidence that he had not taken any steps to seek alternative employment the claimant had failed to mitigate his loss; (3) finding of 6 weeks was a perfectly permissible finding as the claimant produced no evidence as to the timescale it would take for him to find another job.

Applicable law

6. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237 (“the ET Rules”) provides:

“A Tribunal may...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”.

7. Rules 72 of the ET Rules provides:

“(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 parties 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 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.”

Conclusions

8. In reaching my conclusions I have considered all the documents referred to above as well as the Judgment, my notes of the full merits hearing and the claimant’s witness statement at the full merits hearing.
9. The claimant did not provide any evidence at the hearing or in his application for reconsideration of any steps taken to mitigate his loss or any evidence as to how long it would take for him to obtain another job as a Warehouse Operative. In the circumstances, the finding of 6 weeks’ losses and a 15% uplift were and remain permissible findings taking into account the nature of the work undertaken by the claimant, the fact that he had been successful in his claim and the general state of the employment market.
10. In the circumstances, the claimant’s application for reconsideration of the Judgment has no reasonable prospects of success and is refused.

Signed by on 28th November 2017
Employment Judge Choudry

Judgment sent to Parties on

29/11/2017