



EMPLOYMENT TRIBUNALS

Claimant: Miss E Baxter

Respondent: 1. Hotel Van Dyke Ltd
2. MH Snooker Services Ltd (in Creditors Voluntary Liquidation)
3. Lisa Whittaker
4. Michael Joseph Henson

UPON the Tribunal having on 3 November 2017 received an application by the Claimant's solicitors on her behalf for reconsideration of the judgment promulgated on 22 September 2017:

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal upon reconsideration is that the Judgment promulgated on 22 September 2017 (as varied by the judgment upon reconsideration of the Tribunal's own motion) is confirmed and the application is refused:

1. The reconsideration application was made out of time and the Claimant has failed to show cause why it is in the interest of justice to extend time, why the application could not have been made within 14 days of the promulgation date and why it was not made until 28 days after the expiry of the time limit .
2. In any event, the application is refused on the merits.
3. UPON the first limb of the Claimant's application (*that the Tribunal ought to have awarded compensation for wrongful dismissal and unpaid holiday pay upon a joint and several basis against the Second and Fourth Respondents arising from the Claimant's successful discrimination claim*):

There was a transfer of the undertaking at which the Claimant was employed from the Second Respondent to the First Respondent on or around 1 February 2017. It was the First Respondent who dismissed the Claimant following transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. The Second and Fourth Respondent had no involvement in matters after 31 January 2017. They did not dismiss the Claimant and thus did not wrongfully dismiss her and dismiss her without paying her accrued holiday pay. There is no basis in law to hold them jointly and severally liable for the First Respondent's acts. The acts of the Second and Fourth Respondent on the one hand and the First Respondent on the

other are divisible.

4. UPON the second limb of the Claimant's application (*that the concession made on behalf of the Claimant that she should give credit for the sum of £3,000 paid or payable by the First Respondent against the sums awarded in her favour against the Fourth Respondent may be withdrawn and paragraph 3.4 of the Judgment promulgated on 22 September 2017 be varied accordingly*):

4.1 The Claimant's reconsideration application appears to be made upon the incorrect premise that she was an employee of the First Respondent between 3 February and 18 March 2017. The Claimant appears to suggest that: the settlement with the First Respondent was in relation to that period; that that is divisible from the earlier period for which she worked for the Second Respondent; that the Second and Fourth Respondents' acts are indivisible; and they (the Second and Fourth Respondents) are thus jointly and severally liable.

4.2 The reference in the reconsideration application of 3 November 2017 to paragraph 36 of the judgment promulgated on 22 September 2017 is erroneous as that paragraph refers to the Third Respondent (and not the Claimant) as working for the First Respondent over the period between 3 February and 18 March 2017. The Claimant never in fact worked for the First Respondent after 1 February 2017. Her wrongful dismissal complaint against the First Respondent succeeded in relation to her dismissal on or around that date. Her claim was presented upon the basis that she was uncertain as to the identity of the employer at the material times. The Tribunal is therefore not satisfied that the claims against the First, Second and Fourth Respondents are truly divisible upon the basis that the Claimant worked for the Respondents for different and distinct consecutive periods. It follows that the settlement reached with the First Respondent was in relation to the same period of time as was under consideration at the hearing concerning the other Respondents and in respect of which an award was made in the Claimant's favour. The Claimant's solicitor's concession was therefore correctly made.

4.3 There would significant prejudice to the Fourth Respondent of allowing a withdrawal of the concession after the hearing as that deprives him of the opportunity of making representations and/or calling evidence upon the issue.

Employment Judge Brain
Date: 27 November 2017