



EMPLOYMENT TRIBUNALS

Claimant: Miss A Breakell

Respondent: DPS Software Limited

HELD AT: Manchester

ON: 14 November 2017
23 November 2017

BEFORE: Employment Judge B Hodgson

REPRESENTATION:

Claimant: In person

Respondent: Mr P Carroll, Management Consultant (14 November 2017)
Mr O Ismail, Managing Director (23 November 2017)

JUDGMENT

The respondent's application dated 23 November 2017 for reconsideration of the Judgment is refused.

REASONS

1. The respondent, through its Managing Director, has sent an email dated 23 November 2017 (incorrectly dated 2018) to the Tribunal setting out the grounds upon which it makes an application to "review" the Judgment "on the basis that it is in the interests of justice to carry out a review".
2. The matters set out as the grounds for the application can be set out or summarised as follows:
 - 2.1. The claimant was permitted to give in evidence a supplementary statement which had been forwarded to the respondent at 4pm on the day prior to the relevant day of hearing;
 - 2.2. The respondent had not previously had sight of this email;
 - 2.3. The respondent was given 20 minutes (including the time the [Tribunal] took to copy the statement and provide it to [the respondent]) to read and consider the statement;

- 2.4. The respondent was asked to cross-examine the claimant on the statement minutes after first sight of it;
- 2.5. During the cross-examination:
 - 2.5.1. The Judge allowed no questions as to why this information had not been previously submitted or why it was submitted so late;
 - 2.5.2. The Judge allowed no questions on any disputed items other than those in the claimant's statement;
- 2.6. The respondent was not allowed to respond to any evidence given by the claimant.
- 2.7. Having only allowed certain items to be disputed, the Judge then proceeded to Judgment [and] allowed no submissions at all.
3. There was a further ground stated, namely that "the Judgment was perverse" with specific reference to the Judgment describing, as part of its findings, a "material change".
4. Having fully considered the application, the Tribunal's conclusions with regard to these matters raised are as follows:
 - 4.1. Evidence needed to be given on the second day and it was appropriate that this be done on the part of the claimant by reference to her supplementary statement.
 - 4.2. The respondent was given (according to the Tribunal's records) 30 minutes to consider the content of the statement after which the respondent indicated that it was ready to proceed by way of cross-examination.
 - 4.3. The important and significant point, however, is that the parties were fully aware as to the purpose of the second day of hearing, namely for the Tribunal to consider and rule upon any outstanding matters of contention between the parties as to sales orders giving rise to an entitlement to commission. This concerned issues that had been fully aired and corresponded over between the parties, including with their respective representatives, for a period of months. The respondent was fully aware of the matters that it was disputing and was fully aware that these were the issues that would be determined by the Tribunal. It therefore either was or should have been in a position to deal with all relevant matters when given the opportunity to do so.
 - 4.4. The important issue was not when the statement had been submitted but rather that the respondent was in a position properly to challenge on all matters it considered appropriate.
 - 4.5. It is not correct to say that no questions were allowed on any disputed items other than those in the claimant's statement. This is borne out by the fact that one of the matters contested by the respondent in cross-examination, and dealt with within the Judgment, was not one that was raised within the claimant's supplementary statement.

- 4.6. The respondent's response to the evidence given by the claimant was accepted by the Tribunal as contained within its cross-examination.
 - 4.7. It is not correct to say that no submissions were permitted prior to the Tribunal proceeding to Judgment.
 - 4.8. The Tribunal's reference in the Judgment to a "material change" was simply a factual description of the events that had occurred with regard to one of the matters in issue.
5. In all the circumstances, the Tribunal concludes there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge B Hodgson

Date 18 December 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
22 December 2017

FOR THE TRIBUNAL OFFICE