EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr M Skwiot

Respondent: GGE Limited t/a Romneys

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON AN APPLICATION FOR RECONSIDERATION OF A JUDGMENT

The application for reconsideration of a Judgment by the claimant contained in an email from the claimant dated 22 January, 2018, is refused in accordance with Rule 72(1) of the Employment Tribunal Rules of Procedure, 2013, on the ground that there is no reasonable prospect of the Judgment being varied or revoked

REASONS

1 By an email from the claimant dated 22 January, 2018, the claimant has applied for reconsideration of the Tribunal's Judgment given following the hearing on 3 January, 2018.

2 Rule 71 of Employment Tribunal Rules of Procedure, 2013, provides that an application shall be made in writing. Although it might be possible for an Employment Judge to seek further particulars, there is a presumption in the Rules that any application should be complete and set out all matters relied upon so that the application can, if appropriate, be responded to by the other party and considered by the Employment Judge.

3 With regard to notice pay, the respondent is raising an argument that was considered by the Tribunal at the hearing. Section 87(2) of the Employment Rights Act, 1996, ('the ERA') provides that

> If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of sections 88 to 91 of the ERA have effect as respects the liability of the employer for the period of notice required by section 86(2) of the ERA.

4 Sections 88 and 91 of the ERA, among other things, deal with the payment of notice pay.

5 However, Section 87(4) of the ERA states that

> This section does not apply in relation to notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by section 86(1).

6 Accordingly, the requirement to pay notice pay where the employee is incapable of work because of sickness or injury (Section 88(b) of the ERA) will not apply if the conditions in Section 87(4) of the ERA are met.

7 The claimant's contract of employment, which he signed, provided that 'after probation and up to 5 years – 1 month' was the period of notice that the respondent was required to give the claimant, who had less than one year's employment when he resigned. By Section 86(1)(a) of the ERA, the statutory minimum notice that the respondent was required to give the claimant after that period of employment was one week. That period plus one week is two weeks. The respondent was required to give one month's notice, which is more than four weeks and more than one week more than the statutory minimum notice to which the claimant was entitled.

8 It follows from the above that the claimant was not entitled to rely on Section 87(2) of the ERA in claiming notice pay. He was therefore only entitled to receive the pay to which he was entitled to in accordance with the terms of his contract of employment. The contract provided that the claimant was only entitled to receive statutory sick pay whilst unfit to work through sickness. This would depend upon receipt by the employer of fitness to work statements.

9 The claimant now states that he started employment with the respondent on 23 October, 2016. This is not the date given in the claimant's contract of employment. Further, in his application, the claimant repeatedly stated that he started work for the respondent on 24 October, 2016. The change of start date appears to have been put forward late in the proceedings in an attempt to improve his claim for holiday pay without any supporting evidence and therefore undermines the claimant's credibility.

10 The claimant has failed to demonstrate that he has reasonable prospects of showing that he is entitled to payment of his full wages for the period of his notice.

11 The claimant had an arrangement with the respondent where he was paid a fixed salary although his actual hours varied from week to week. Excess hours were added to his holiday entitlement (what might otherwise be described as time off in lieu), and any hours not worked were deducted from it. On his claim form, the claimant set out a detailed calculation of his alleged entitlement. On the basis of his calculation, he took more leave than he was entitled to in 2017 by 28 hours. Again, on his calculation, he was entitled to 33 hours in 2016. Even if it is accepted, and it is not certain, that the claimant could carry holiday into the following year, he would only be 5 hours in credit at the end of his employment. However, the Tribunal did not accept that the claimant did not take any leave in 2016, especially as the claimant's contract states that Christmas Day and Boxing Day are taken as paid holidays, and, accordingly, his claim for holiday pay was rejected.

12 Although the claimant's email is not entirely clear, if he is suggesting that he had a leave entitlement of an additional 12 hours more than he previously claimed, on the balance of probability it is still unlikely and not accepted that the claimant would have had a greater leave entitlement than that for which he was paid.

13 The claimant has failed to demonstrate that he has reasonable prospects of showing that he is accrued holiday entitlement for which he did not receive payment.

14 With regard to the payment of statutory sick pay, in his claim the claimant states 'the employer did not pay my SSP or any other money'. In his calculation, credit is not given for the receipt of any SSP. Also in the claim, he only states that he handed in one fitness for work statement. Now he claims that he handed in two statements but does not say when he handed in the second one.

15 The respondent's case was that the claimant was paid his SSP entitlement arising from the first fitness for work statement but that the second statement was not received and the claimant was noted as having been on an unauthorised absence. Given the contents of the claimant's case and the nature of the records kept by the respondent, the Tribunal found that on the balance of probability, the claimant did not hand in his second sick note and so was not entitled to payment of further SSP.

16 The claimant has failed to demonstrate that he has reasonable prospects of showing that he was entitled to any payment for the period that the second fitness for work statement might have covered or that he did not receive all of the payments to which he was entitled.

17 With regard to whether the interests of justice require a review, although the claimant is clearly disappointed with the Tribunal's Judgment and raises various issues, he does not raise anything in the application that had not been raised before and considered by the Tribunal. The Tribunal was concerned with whether, on the basis of the information and arguments placed before it, the parties had established their cases and had to apply the relevant legal principles. Having made its findings of fact, the Tribunal made the decisions set out in its Judgment in accordance with those principles. The claimant does not show that the interests of justice require the reconsideration of the Judgment or that there was any error on the part of the Tribunal.

18 Having regard to all of the circumstances, the claimant has not established that the interests of justice require that the Judgment needs to be reconsidered or that, if it was reconsidered, there is a reasonable prospect of the Judgment being varied or revoked.

19 Rule 72(1) as set out in the Employment Tribunals Rules of Procedure, 2013, states that the Employment Judge considering an application for reconsideration of a Judgment shall refuse the application if he considers that there are no reasonable prospects of the original decision being varied or revoked.

20 It follows that the application for reconsideration of the Judgment is refused.

Employment Judge Nicol
Date _29 January, 2018_____

JUDGMENT SENT TO THE PARTIES ON
5 February 2018
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FOR THE TRIBUNAL