THE EMPLOYMENT TRIBUNALS

Claimant: **Mr M Morris**

Respondent: **The Chauncy School**

Before: **Employment Judge M Warren (sitting alone)**

DECISION ON AN APPLICATION FOR RECONSIDERATION

The Claimant's application for a reconsideration of the Judgment on 18 December 2017, signed on 19 December 2017, is refused on the ground that the is no reasonable prospect of the original decision being varied or revoked.

REASONS

Background

1. By a decision with reasons given orally to the parties on 18 December 2017, I dismissed Mr Morris' claims for unfair dismissal, notice pay, failure to provide written terms and conditions of employment and for unpaid wages. Specifically, I found that he had not been an employee of the respondent.

2. I did however, find that he was a worker and was entitled to holiday pay. I made an award of £359.38 in that respect.

3. By an email dated 21 December 2017, Mr Morris asked for Reasons.

4. In an email to the tribunal on 4 January 2018, Mr Morris said that he wanted to appeal and re-iterated his request for written reasons.

5. I completed the written reasons on 22 January 2018 and they were sent out to the parties on 1 February.

6. By an email of 1 February 2018, Mr Morris wrote to the tribunal to say that he wished to appeal and asked for the documentation to begin this. That email was referred to me by the tribunal staff on 26 February but unfortunately, I

have been absent due to ill health. Today is my first day back and is the first I have seen of this correspondence.

7. I treat Mr Morris's correspondence as a request for a reconsideration. However, he should note that if he wishes to appeal, he must direct his correspondence to the Employment Appeal Tribunal and that there is a very strict time limit of 42 days from the date the written reasons were sent to the parties, (i.e. from 1 February 2018 in this case).

The Law

8. Rules 70 to 72 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of Tribunal Judgments as follows:

> *"**Principles***
> ***70***
> *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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.*
>
> ***Application***
> ***71***
> *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*
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> ***Process***
> ***72***
> *(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that 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 Tribunal shall inform the parties of the refusal. …*

9. The key point relating to reconsideration is that it must be in the interests of justice to reconsider a Judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing, a mistake as to the law, a decision made in a parties absence. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties

have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have, "a second bite at the cherry", (per Phillips J in Flint v Eastern Electricity board [1975] IRLR 277).

Discussion and Conclusions

10. In his email of 4 January, Mr Morris suggests that evidence was not taken into account. He says that his hours were set and that work was supplied for those set hours, "on a fixed term".

11. In his email of 1 February, Mr Morris suggests that I made an error regarding the day that he left his employment; he seems to be suggesting that it was on 31 August and not 10 July 2017.

12. Unfortunately, I fear that Mr Morris has misunderstood my findings. I accepted the evidence of Mr Wathen, (site supervisor) that cleaning staff, including Mr Morris, were free to not turn up at work and that there was therefore no mutuality of obligation, an essential ingredient for a contract of employment to exist. He was therefore not an employee and his claims other than for holiday pay, could not succeed.

13. I made that finding on the evidence before me on the day. There has to be finality in litigation. Mr Morris is not permitted to simply reargue his case. It is not in the interests of justice that the original decision should be varied or revoked.

14. I calculated the holiday pay due on the basis of the days actually worked by Mr Morris, for those are the days on which it accrues. On his own evidence, he did not do another day's work after 10 July 2017.

15. There are no reasonable prospects of the original decision being varied or revoked and the reconsideration application is therefore refused.

Dated: 12 March 2018

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Employment Judge M Warren

JUDGMENT SENT TO THE PARTIES ON

.16/04/2018...

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FOR THE TRIBUNAL OFFICE