EMPLOYMENT TRIBUNALS

Claimants: Mr K Wood
Mr J Mackie
Mr J Pownall

Respondent: I& B Brickwork Solutions

JUDGMENT

The respondent's application for reconsideration of the judgment sent to the parties on 16th April 2018 is refused.

REASONS

1. I have considered the respondent's application, by letter of 15th May 2018, for reconsideration of my Judgment upholding the claimants' claims for holiday pay. The claimants have responded to that application in several emails which I have read, however, their contents add nothing new to the evidence and arguments presented at the Hearing of the claim.

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application if I consider that there is no reasonable prospect of the original decision being varied or revoked. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70). Preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

3. I heard the case over one day on 28th March 2018. The respondent was legally represented and the claimants represented themselves. I heard evidence from all three claimants and from Mr Halliwell for the respondent. I took into consideration the contents of the claim form, response and the documentation shown to me, alongside the witness evidence, in reaching my findings of fact. Having reread my findings, legal analysis and conclusions, I am satisfied that my findings were sound and based upon the evidence given by the witnesses on the day and that I have directed myself to the relevant legal authorities and reached my conclusions consistent with the guidance contained within those authorities.

4. My judgment contains one typographical error, which the respondent relies upon as a ground for reconsideration; Mr Helliwell explained in his witness statement that contractors are required to deduct tax for subcontractors registered with the Construction Industry Scheme (CIS) at 20%, but for non-registered subcontractors at 30%. In my judgment at paragraph 12, I record the non-registered deduction as at 40%. However, this error makes no material difference to my finding that, given that tax is deducted at 20% for registered contractors, that provides a significant incentive for any bricklayer to register for the CIS scheme.

5. There was evidence before me that the claimants would sometimes work with a hod-carrier and that this individual had turned up on a site in which they were working looking for some labouring work. I make no findings about this as it does not materially affect my findings at paragraphs 6, 7, 9 & 21 as to the payment arrangements for work done (i.e. calculated by reference to completion of 'lifts' and paid individually and weekly to each of the three claimants) and my conclusions.

5. Accordingly, having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

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Employment Judge Howard

7th June 2018

JUDGMENT SENT TO THE PARTIES ON

11 June 2018

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FOR THE TRIBUNAL OFFICE