



# EMPLOYMENT TRIBUNALS

## Claimant

Mr A Pestana

## Respondent

West Hill Court  
Management Co.  
Limited

## JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made on 9 August 2018 to reconsider the judgment sent to the parties on 26 July 2018 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing: -

The application to reconsider is refused as there is no reasonable prospect of the judgment being varied or revoked.

## REASONS

### Introduction

1. One of the claimant's complaints was that he had been unfairly dismissed by the respondent. This complaint was dismissed by the Tribunal following a hearing which took place on 20 and 21 June 2018.
2. The Tribunal concluded that the reason for the claimant's dismissal was one which related to his conduct. The claimant had been employed by the respondent as a porter/caretaker. One of the incidents which led to his dismissal was that the claimant had stripped his office of virtually all equipment, removing the desk, chair, kettle and even the fuse for the refrigerator plug, rendering the office effectively unusable for the relief porter/caretaker during the claimant's absence on holiday.
3. The claimant has sought a reconsideration of the tribunal's judgment by a document dated 8 August 2018. The stated grounds for the application are that there is no reference in the judgment to the 'fact' that the items in question were the claimant's own property and that this is something which

should have been considered when deciding whether the decision to confirm the dismissal was one which a person hearing the appeal against dismissal could reasonably make.

## Rules

4. The relevant employment tribunal rules for this application read as follows:

### *RECONSIDERATION OF JUDGMENTS*

#### *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.*

#### *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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

*(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any*

*reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.*

5. In essence, my task is to consider whether reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

### Conclusions

6. It is not correct for the claimant to state (paragraph 9 of the request) that: 'no reference was made in the judgment to the fact that the items were the claimant's property'. The question of ownership of items removed was dealt with in paragraphs 18 to 29 and 48 of the written reasons. In addition, and as the request for reconsideration states in paragraph 8 of the request, ownership of the items was not the primary issue for the respondent. The respondent did not accept the claimant's argument that the items belonged to the claimant, but it was the condition in which the claimant left the office which was deemed by the respondent to be misconduct - the fact that he deliberately left the office unusable for whoever would be covering for him during his leave. This was compounded by the claimant's acceptance to the respondent that what he had done was an 'act of defiance' and a 'V sign to the directors' (see paragraph 20 of the written reasons).
7. Accordingly, there is no reasonable prospect of the decision being varied or revoked and reconsideration would not be in the interests of justice.

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Employment Judge Finlay

Date: 2 October 2018

Sent to the parties on:

.....12 October 2018.....

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For the Tribunal Office