



THE EMPLOYMENT TRIBUNALS

Claimant: Mr R Brooks

Respondent: (1) TP Clarke Groundworks Limited
(2) Mr T Clarke

JUDGMENT ON RECONSIDERATION

The respondents' application dated 19 September 2018 for reconsideration of the judgment sent to the parties on 5 September 2018 is refused.

REASONS

- 1 The application for reconsideration made on behalf of the respondents relies upon two principal bases, which are addressed below in turn.
- 2 The first relates to correspondence with Partner Construction Limited. The explanation given in the application relating to the respondents' response to the letter from that company of 6 November 2017 (which is apparently dated 8 November 2017) is noted. That said, given the parameters that are set out in paragraph 7.2 of the Tribunal's Reasons that there would be admitted, "letters from Partner Limited" and any documents of which the claimant "had or should have had knowledge", it is not readily apparent why that letter of response or the subsequent letter from Partner Limited were omitted.
- 3 Be that as it may, in light of that explanation it might be that the final two sentences of paragraph 17.34 of the Reasons need to be refined; albeit that it remains to the discredit of the respondents that the letter of 6 November was introduced only on the first morning of the Tribunal hearing and not during the disclosure process. Any refinements to that paragraph 17.34 will be pursued with the non-legal members when the Tribunal reconvenes to consider remedy and any necessary amendments arising from those discussions will be made. At this juncture, however, even if those two sentences (or even that whole paragraph) were to be deleted in their entirety, I am satisfied that that would not impact upon the "original decision" (*see further below*) of the Tribunal given the significant weight of the other findings of the Tribunal, which the respondents do not seek to impeach.

- 4 The second basis for the application relates to credibility. As is acknowledged in the application, the Tribunal was indeed careful not to be swayed by the demeanour of any of the witnesses but it was impressed by the manner in which the claimant, Mr Smith and Mr Hugill gave evidence. A generalised reason for that (there are specific reasons given elsewhere in the Reasons) is explained in the final sentence of paragraph 19 of the Reasons, which is not referred to by the respondents in their application. That generalised reason is that their evidence “appeared to grow in stature during cross-examination where they answered questions clearly and consistently both with such contemporaneous documentation as was before the Tribunal and with each other”. That is not demeanour.
- 5 On a separate point, the application acknowledges that at paragraph 17 of the Reasons, it is recorded that the Tribunal took into consideration the submissions made on behalf of the parties but the application then seems to suggest that the Tribunal did not do that: “... if those submissions were not considered ...”. The parties can once more be assured that the submissions, oral and written, of each of the representatives were considered. That is stated at that paragraph 17 of the Reasons and is reinforced at paragraph 26, especially the final sentence: “Suffice it to say that the Tribunal fully considered all the submissions made, together with the case law referred to, and the parties can be assured that they were all taken into account in coming to our decisions.”
- 6 Rule 72 of the Employment Tribunals Rules of Procedure 2013 provides, amongst other things, as follows:

“If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked ..., the application shall be refused and the Tribunal shall inform the parties of the refusal.”
- 7 The focus of that Rule, therefore, is upon the prospect of the “original decision” being varied or revoked as opposed to, for example, an element of the reasons for that decision being varied or revoked.
- 8 Having carefully considered the application on behalf of the respondents and the response on behalf of the claimant I am satisfied that “there is no reasonable prospect of the original decision being varied or revoked.” As such, the application is refused.

EMPLOYMENT JUDGE MORRIS

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 12 October 2018**

**JUDGMENT SENT TO THE PARTIES ON
12 October 2018
AND ENTERED IN THE REGISTER
G Palmer
FOR THE TRIBUNAL**

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