



EMPLOYMENT TRIBUNALS

Claimant: Mr D Dee
Respondent: Suffolk County Council

JUDGMENT

The claimant's application dated 27 March 2018 and the Respondent's application dated 4 April 2018 for reconsideration of the remedy judgment sent to the parties on 14 March 2018 is refused. Originally this was responded to by Employment Judge Postle by letter on 1 July 2018. The content of the reasons for refusal are now formally recorded in this Judgement in accordance with Rule 72.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because

Employment Judge Postle has considered your application for a reconsideration dated the 14 March and 4 April and comments as follows:

1. The judgment is clear on the 50% reductions – and the parties should follow the normal rules in applying deductions in this case.
 - a) Calculate the total losses suffered by the claimant;
 - b) Then deduct 50% to take account of the Polkey reduction;
 - c) With the above balance then deduct the 50% reduction for contributory fault.
2. Unfair Dismissal awards consist of a basic award and a compensatory award. The judgment shows clearly the percentage reduction is against the compensatory award only.
3. Employment Judge Postle does accept he omitted to deal with the question of whether there should be an ACAS uplift on the awards in the judgment.

The ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 gave Tribunals the power to increase up to 25% on awards of compensation if the Tribunal feels that a respondent has unreasonably failed to follow the guidance set out in the code.

In Kuehne & Nagel Limited v Cosgrove EAT/0165/13 it was said that an employment tribunal may only consider adjusting the compensatory award once it has made express finding that a failure to follow the code was unreasonable and adjustment does not automatically follow from a breach of the code.

Furthermore, an employer's failure to follow its own internal procedures will not necessarily lead to a finding of a breach of the ACAS Code.

Employment Judge Postle accepting the procedure leading to dismissal was flawed did not conclude that there were unreasonable failures to follow the code. In exercising the Tribunal's discretion, Employment Judge Postle concluded this was not a case when an uplift was warranted.

Employment Judge **Postle**

Date 12 October 2018 _____

JUDGMENT SENT TO THE PARTIES ON

12 October 2018.....

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FOR THE TRIBUNAL OFFICE