



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Clegg

**Respondent:** Yourplumbstop Limited

## RECONSIDERATION

1. On 24 January 2019, following the final hearing in Nottingham on 23 January 2019 but before the written version of the Judgment given at the hearing had been sent out, Mr David Weldon of the respondent emailed the tribunal. Although the subject line of the email header contains the word “complaint”, Mr Weldon’s email appears to be or to include an application for reconsideration. It is that reconsideration application I [Employment Judge Camp] am addressing here rather than anything else Mr Weldon has to say. In particular: I don’t propose to deal with his personal and/or general criticisms of me; and if the respondent wishes to appeal, that is a matter between the respondent and the Employment Appeal Tribunal.
2. Although the email had not been copied to the claimant in accordance with rules 71 and 92 I have considered the application under rule 72(1). I refuse the application because there is no reasonable prospect of the original decision being varied or revoked.
3. There were only two issues in the case: was the claimant dismissed?; was a payment of £328.44 (equivalent to £440 gross) – a payment everyone agreed the respondent had made to the claimant by cheque dated 10 August 2018 – payment for the work the claimant had done for the week ending Sunday, 5 August 2018 or was it his notice pay, i.e. was it for the week ending 12 August 2018? I resolved both of these issues in the claimant’s favour and remain of the view that I was entitled to do so on the evidence that was put before me.
4. In relation to whether the claimant was dismissed, I don’t think I can usefully add anything to what I said during the part of the hearing Mr Weldon was present for. I explained what I ‘see in’ (what he describes as) “*a text message that did not clearly state dismissal*” and why I decided that the claimant was dismissed by that text message. Mr Weldon evidently disagrees with my decision, but that is not by itself a basis for reconsideration and I can identify no potential error of law.
5. In relation to what the payment of £328.44 was for, however, I think it might be helpful for me to add to and clarify the reasons I gave orally, not least because I would have done so at the hearing had Mr Weldon raised his concerns and not walked out. Also, I did touch on this issue when giving my reasons for awarding

the claimant 4 weeks' rather than 2 weeks' pay under section 38 of the Employment Act 2002, reasons which Mr Weldon did not hear because he had walked out by the time I gave them.

6. Mr Weldon appears to think I gave Judgment in the claimant's favour purely because I decided there was a TUPE transfer to the respondent – that is, a transfer of the claimant's employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 – probably in March 2018, from a company of Mr Weldon's that went into liquidation on 17 April 2018 called Flowfayre Limited. He is right that I did decide this – and I note that the relevance of the claimant's work for Flowfayre Limited and the possibility of a TUPE transfer was discussed at length during the hearing and Mr Weldon did not make the allegation he makes in his email that when that company went into liquidation, "*they all took government payments identified in his bank statement in front of the judge*". I still think that part of my decision was right. But in any event, my Judgment in the claimant's favour did not depend on me deciding there was a TUPE transfer.
7. The fundamental question I had to answer was: what was the payment on 10 August 2018 for? It was clear to me, for reasons that apply whether there was a TUPE transfer or not, that it was for pay for work done the previous week rather than for notice pay.
  - 7.1 The claimant worked continuously from Monday, 12 February 2018 onwards, first for Flowfayre and then, from around 19 March 2018, for the respondent.
  - 7.2 The claimant was paid each week, on a Friday, by bank transfer (apart from the final payment, which, as already mentioned, was by cheque), first by Flowfayre and then by the respondent.
  - 7.3 The first payment to the claimant by Flowfayre was made on Friday, 23 February 2018. That payment must logically be attributable to claimant's first week of work – the week from Monday, 12 February 2018. The next payment was made on Friday, 2 March 2018, which must logically be attributable to his second week of work; and so on. Accordingly, a pattern was established of wages being paid a week (or so) in arrears.
  - 7.4 The pattern of payment was not interrupted and there was no real evidence suggesting that at some point between February and August 2018, the respondent or its predecessor suddenly 'skipped' a week's payment and started paying the claimant for his work during a particular week on the Friday of that week rather than in arrears.
  - 7.5 If the pattern of payment had changed in this way, the claimant would still be owed a week's money – for the week that had been 'skipped' – and Mr Weldon was not suggesting that he was owed anything. He did not, for example, give evidence to the effect that the claimant had been owed a week's wages by Flowfayre Limited when it went into liquidation.
  - 7.6 Following the established pattern through to the end of the claimant's employment, the payment made on 3 August 2018 would have been for work done the previous week – Monday, 23 to Sunday, 29 July 2018 – and

the cheque dated 10 August 2018 would be for the work done the week after that – the week to Sunday, 5 August 2018.

- 7.7 The respondent's own wage slips follow that pattern. They give the claimant's "Join Date" (which I take to mean the date when the claimant started working for the respondent instead of for Flowfayre Limited) as 19 March 2018 and the first wage slip from the respondent gives the pay date as 30 March 2018 (albeit the first payment from the respondent was actually made on 29 March 2018 – the only payment made on a Thursday rather than a Friday, presumably because 30 March 2018 was Good Friday).
  - 7.8 In his letter of 7 August 2018 enclosing the (post-dated to 10 August 2018) cheque for £328.44, Mr Weldon stated that the money was for the claimant's "last week's pay" and did not mention notice pay.
  - 7.9 In an email of 12 August 2018, in response to an emailed letter from the claimant of the same date in which the claimant asked for notice pay and accrued holiday pay, Mr Weldon did not state "I have just paid you your notice pay" or anything like that. Instead, he stated, "*you were in probation in a new company no weeks in notice .... Taking a salary you accepted my business rules*".
  - 7.10 Given that it was the respondent's case that the claimant had not been dismissed, why would the respondent have paid notice pay and why, consistent with that case and with his allegation that he had paid notice pay, was Mr Weldon not arguing that he had overpaid the claimant?
8. In summary, I decided that as a matter of fact, regardless of whether there was a TUPE transfer, the claimant had not been paid for the week that would have been his notice period had he been given notice: the week commencing Monday, 6 August 2018. That was a finding of fact that it was open to me to make. So even if – which I do not accept – I made an error of law when I decided that the claimant's employment TUPE-transferred to the respondent from Flowfayre Limited around 19 March 2018, the claimant would still win this case. That is why I think there is no reasonable prospect of my decision in the claimant's favour being varied or revoked.

EMPLOYMENT JUDGE CAMP

25 January 2019

Sent to the parties on:

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For the Tribunal:

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