# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr P Barry**

**Respondent:** **T & L Sugars Limited**

# JUDGMENT

The Claimant's application dated 22 November 2018 for reconsideration of the Judgment sent to the parties on 8 November 2018 is refused.

## REASONS

1 The Claimant made a timely application for a reconsideration of the Judgment under Rule 71 of the Employment Tribunal Rules of Procedure 2013. He relied upon three broad grounds: (1) the findings that the Claimant had demonstrated a lack of accountability were not supported by the unchallenged evidence about the appeal hearing; (2) dismissal save for gross misconduct was not consistent with the Respondent's disciplinary policy; and (3) there were no rules in place and/or the Claimant's conduct would not have breached the new rules when introduced.

2 The Tribunal sent a copy of the application to the Respondent and invited its comments. By letter dated 18 January 2019, the Respondent resisted the application on the following basis: (1) the Claimant had "cherry-picked" extracts from the appeal notes; (2) the disciplinary policy did not preclude dismissal even without gross misconduct; and (3) it was not necessary to demonstrate breach of an express rule for dismissal to be fair.

3 I considered both the application and the objection. The extent to which the Claimant accepted, or did not accept, responsibility at the appeal hearing was considered at paragraph 48 of the Reasons. His evidence about responsibility was not unchallenged; it was a central part of the Respondent's case. The Claimant now seeks to re-open the findings by seeking to place more weight on certain comments which appeared to accept responsibility as against those where he did not. This equivocation was considered in the Judgment and led to my conclusions at paragraphs 87 and 88, relying upon the notes of the appeal read overall.

4 As for the second and third grounds, these relate to whether or not dismissal could have been fair within the range of reasonable responses and/or

there should be a reduction for contributory fault. The Judgment of the Tribunal was that there should but that the amount of any adjustment would be decided at the Remedy Hearing. The relevant factors to be considered are set out at paragraphs 85 to 88 of the Reasons. They include the procedures in place at the time, the Claimant's role and rules about quarantining and the seriousness of the offence to be considered within paragraph 1.4 of the Disciplinary Procedure.

5 Overall, the Claimant's application is a repetition of arguments which he made at the hearing in an attempt to re-litigate points which were considered and rejected for the reasons given. Disagreement with the findings and decision of the Tribunal is not a valid ground for reconsideration. Insofar as the Claimant believes that as a matter of law there should not be any **Polkey** or contributory fault reductions, these are more properly matters for the Employment Appeal Tribunal in the appeal lodged on 15 December 2018.

6 None of the matters raised by the Claimant are such that they would give any reasonable prospect of original decision being varied or revoked and it is not necessary to reconsider the judgment in the interests of justice. Accordingly, the application for a reconsideration is refused under rules 70 and 72.

Employment Judge **Russell**

31 January 2019

11.6R Judgment – Reconsideration refused – respondent - rule 72