



EMPLOYMENT TRIBUNALS

Claimant: Mr D Scanlon

Respondent: Young Engineers Ltd (in liquidation)

UPON APPLICATION made by the respondent by letter dated 29 November 2017 to reconsider the judgment sent to the parties on 8 November 2017 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

AND UPON receiving representations from both parties on the matter pursuant to rule 72(2) of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT

The judgment is varied, to the extent that the normal requirement for the respondent to comply with the judgment by payment within 14 days pursuant to rule 66 of the Tribunal's (Constitution and Rules of Procedure) Regulations 2013 is removed and the judgment sum shall be provable in the respondent company's liquidation.

REASONS

1. The respondent has applied for a reconsideration of the reserved judgment dated 8 November 2017 which was sent to the parties on 23 November 2017 ("the Judgment"). The grounds are set out in its letter dated 29 November 2017].
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. The grounds relied upon by the respondent are as follows:.
 - 4.1. The claimant bought complaints of unlawful deduction of wages to the tribunal. Both the wages claimed and the initiation of tribunal proceedings predated the respondent going into voluntary liquidation. As such in accordance with established authorities (see the Supreme Court

judgment dated 24 July 2013 in re Nortel Companies and others [2013] UKSC 52) it is established that such moneys (which were the subject of the judgment) constitutes an unsecured claim which should be provable in the liquidation, in accordance with the Insolvency Act 1986.

- 4.2. The judgment was reserved and therefore the respondents through its counsel did not have the opportunity to address the tribunal in respect of the precise wording of the judgment.
- 4.3. The judgment as it stands is inconsistent with the provisions of the Insolvency Act 1986.
- 4.4. The claimant should not be in a better position than other unsecured creditors of the respondent.
5. The claimant in a number of written representations objects to this proposed variation.
6. It is proper to record that the issue of judgment becoming payable 14 days after receipt of reasons was not something that had been addressed during the hearing, or indeed was consciously in my mind when the judgment and reasons were signed by me prior to promulgation.
7. It is proper to record the statutory basis upon which the 14 day requirement is based. Rule 66 of the Tribunal's Rules of Procedure 2013 addresses the issue of the time for compliance with any judgment of the tribunal and states:-

A party shall comply with the judgment or order for the payment of an amount of money within 14 days of the date of the judgment or order, unless _

 - (a) judgment, order, or any of these rules, specifies a different date for compliance;
or
 - (b) the Tribunal has stayed (or in Scotland sisted) the proceedings or judgment.
8. The principle enshrined in the Nortel case makes it clear that any moneys referable to employee remuneration prior to liquidation must be proved within the liquidation on an equal footing with other unsecured creditors. I agree that the judgment as it stands conflicts with the insolvency legislation. I therefore judge that it is in the interests of justice that the judgment be varied as requested by the respondent to delete the requirement for the payment to be paid 14 days from the date of judgment sent to the parties. The judgment sum requires to be provable within the liquidation.
9. Accordingly I grant the application for reconsideration and vary the judgment terms accordingly, as requested by the respondent.

Employment Judge Kolanko

Dated 11 May 2018