



THE EMPLOYMENT TRIBUNAL

BETWEEN:

Mr D Abbott

Claimant

and

Sainsbury's Supermarket Ltd

Respondent

JUDGMENT

The claimant's application dated 28 December 2018 for reconsideration of the Judgment sent to the parties on 13 December 2018 is refused.

REASONS

Having considered the claimant's application for a reconsideration, I have identified three broad grounds upon which he relies. There is no reasonable prospect of the original decision being varied or revoked on any of those grounds whether taken individually or collectively, because:

1. The first ground arises from the claimant's criticisms of the way the giving of evidence was managed and allegations that I prevented him from asking questions and/or giving his evidence as he wished.
2. I have reviewed my notes of the hearing. The claimant commenced his evidence at 12.25 and cross examination of him concluded at 14.55 (including a lunch break). I then asked the claimant some questions and when I had finished those I gave the claimant an opportunity to clarify his evidence in any way that he wished (effectively in place of re-examination had he been represented). I have a note that in response to that invitation the claimant commented on certain pages within the bundle. His evidence concluded at 15.00. We then adjourned for 10 minutes and Mrs Clark, the claimant's mother, commenced her evidence at 15.15. She was cross-examined by the respondent, asked questions by me and then at 15.15, the

claimant was given the opportunity to clarify anything arising out of her evidence which he did.

3. Mr Curness for the respondent commenced his evidence at 15.35. The claimant cross-examined him until 16.10 following which I asked some questions and Mr Curness was re-examined by respondent's counsel at 16.15. During that re-examination Polkey was raised for the first time. I therefore gave the claimant an opportunity to ask Mr Curness any questions he had on Polkey after giving him a little time to think about anything he wanted to ask and consult with his mother. In response, the claimant referred Mr Curness to his length of service and clear record.
4. After a discussion with the parties about how to proceed, agreement was reached that they would send in written submissions and I explained the position regarding a provisional remedy hearing which was listed for January 2019 and that in the event the claimant was successful orders would be needed for pension calculations. The hearing concluded at 16.35.
5. My notes record that during the evidence there were occasions where I indicated both to the claimant and to the respondent's counsel, that they should move on from particular points. I did this because I felt that I had the evidence I needed and understood the parties' respective positions on issues or irrelevant matters were being raised, and was mindful of the need to conduct the hearing in a timely fashion. I have no note of the claimant at any point expressing any dissatisfaction with not being allowed to present his case as he wished. If he had done so, I would have given it very serious consideration and would have made a note.
6. Specifically regarding evidence about occupational health, my notes record that the claimant asked Mr Curness two questions about this which were answered. I then intervened and indicated that the referral to occupational health was 'not in scope'. By this I meant that this was not one of the matters identified by the claimant as part of the respondent's breach. Although the fact of the referral to occupational health was described in the subsequent written reasons, this is because it was context for subsequent conversations between the claimant and Mr Ryan during which, I found, Mr Ryan had become frustrated and allowed that frustration to show. I concluded however that that behaviour by Mr Ryan did not amount to a fundamental breach. I consider that I had the relevant evidence about occupational health in the context of the claim and, again, in light of the need to ensure hearings are proportionate, moved the claimant on from that point.
7. The second ground raised by the claimant is that he refers to evidence he has obtained since the hearing from his phone records which he relies upon to support various aspects of his evidence. The phone records were not before me at the hearing and it seems that there are no reasons why the claimant could not have obtained them and submitted them at that hearing if he believed they were relevant. That is not therefore a good ground for a reconsideration.

8. The third ground is broadly the claimant disagreeing with my findings of fact and continuing to seek to argue his case. I fully considered the credibility of Mr Curness and the weight of his evidence. In particular, the claimant has raised in his application arguments about Mr Fitzgerald being implicated as the manager concerned and deliberate attempts to conceal that. Again, the claimant had every opportunity to make his case as he saw fit at the hearing and I gave full consideration to what he presented together with all the evidence and documents I heard/read and made findings of fact. My conclusions were based on those facts.
9. Therefore I do not consider that the grounds relied upon by the claimant for a reconsideration are valid both when viewed individually and collectively.

Employment Judge K Andrews
Date: 26 February 2019