



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Ryan

v

Fastline Pty Ltd

Reasons - Request for reconsideration

1. In an email dated 12 March 2019 the respondent made a request for a reconsideration of the written judgement sent to the parties on 27 February 2019.
2. The respondent's request for reconsideration can be summarised as follows:
 - 2.1 there is an accidental error in the Tribunal's calculations such that the award of £2992.56 should be £2792.56; and
 - 2.2 the December 2017 payment to the claimant included an overpayment of £2500 and this should have been deducted from any award made.
3. In a letter dated 20 March 2019 the claimant set out the following:
 - 3.1 it agreed with the respondent that there was a computation error in the final award such that it should be £2792.56;
 - 3.2 it disagreed that there was any other basis on which to change the final award: the claimant did not accept that there had been an overpayment. There was no jurisdiction for the tribunal to consider the overpayment as the respondent had not made a counter claim.
4. Rule 72 of Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sets out the procedure when deciding an application under rule 71. It sets out the following:

"If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application..."

5. Rule 70 of Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sets out the following:

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”

6. I find that there is no reasonable prospect of success of the original decision being varied or revoked in relation to the alleged December 2017 overpayment of £2500 for the following reasons:

- 6.1 there is no provision for something similar to set off of overpayments in unlawful deductions from wages cases of the type brought by the claimant. The respondent is reminded of s13(3) ERA 1996;
- 6.2 the respondent did not pursue a counter claim relating to the alleged overpayment;
- 6.3 therefore there is no jurisdiction to consider a breach of contract counter claim;
- 6.4 there is no legal basis for the tribunal to take into account the December 2017 payment in the calculation of the unlawful deduction from wages award.

7. As the parties have agreed that there was an error in the calculation of the original award of £200 in the claimant’s favour I will vary the original award so that the first paragraph of the Judgement reads as follows:

The claimant suffered unlawful deductions from wages contrary to s13 of the Employment Rights Act 1996 in the amount of £2792.56

Judgement

The first paragraph of the Judgement sent to the parties on 27 February 2019 shall be amended to read as follows:

The claimant suffered unlawful deductions from wages contrary to s13 of the Employment Rights Act 1996 in the amount of £2792.56

Employment Judge Bartlett

Date: 29 March 2019

Sent to the parties on: 17 April 2019

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For the Tribunal Office