



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Sarah Hart  
**Respondent:** Cutpay Merchant Services Limited

## JUDGMENT

The respondent's application dated 23 May 2018 for reconsideration of the judgment sent to the parties on 8 May 2018 is refused.

## REASONS

1. Having considered the respondent's application dated 23 May 2018, the claimant's representations dated 22 May 2018 and having reviewed the judgment in this case, I have concluded that there is no reasonable prospect of the judgment being varied or revoked.
2. In reaching this decision I have, in line with Rules 70 - 72 Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, determined whether reconsidering the judgment is necessary in the interests of justice. In determining this central issue, I have reminded myself that a reconsideration in the interests of justice applies only "*where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order.*" **Fforde v Black UKEAT/68/80**. I have also reminded myself of the requirements of the overriding objective to deal with cases "*fairly and justly*" and that this includes the interests of both parties and appropriate consideration being given to the need for finality in litigation.
3. Taking the respondent's grounds in turn and numbering them in order from 1 – 12, each of the grounds is addressed below.
4. Grounds 1 and 12 – it is accepted that this was one of the key issues in the case and at the hearing. The Tribunal gave careful consideration to the underlying text messages, their content and the claimant's participation in

the exchange of explicit text messages. The respondent was able to challenge the claimant at the hearing on this issue. In particular, there was a careful review of the background texts and this issue, including the basis of the Tribunal's distinction between its view of the position during the Initial Period and the Latter Period is addressed in the judgment at paragraphs 49 – 61 and 116 – 152 for the Initial Period and paragraphs 153 – 185 for the Latter Period.

5. In addition, the claimant's sending of explicit texts was a factor in determining the level of the award for injury to feelings and this was addressed at paragraph 213 of the judgment.
6. The respondent's representations at grounds 1 and 12 disagree with the conclusions the Tribunal reached in this regard but do not identify any error of law, failure in procedure or any other basis which would amount to grounds in the interests of justice to reconsider the judgment or establish that there is a reasonable prospect of the original judgment being varied or revoked.
7. Ground 2 – this issue is addressed in the judgment at paragraphs 47 – 48, 108.2 and 110 – 115. At the hearing, the claimant did not accept Mr Rahman's explanation for the content of the relevant text. Although challenged on the issue by Mr Rahman during cross examination, the claimant did not accept Mr Rahman's explanation for the relevant text.
8. The respondent's representations at ground 2 disagrees with the conclusions the Tribunal reached in this regard but do not identify any error of law, failure in procedure or any other basis which would amount to grounds in the interests of justice to reconsider the judgment or establish that there is a reasonable prospect of the original judgment being varied or revoked.
9. Grounds 3 – 4 – the issue of the claimant's performance and sales experience is addressed at paragraphs 27 – 28, 43 – 46 and 180-184 of the judgment.
10. The claimant's performance at work was not in itself relevant to the underlying allegations made, except in relation to remedy (addressed at paragraphs 42 and 205 – 206 and, as suggested in ground 3, as to the mindset behind the claimant's sexual/personal texts. This latter issue is addressed in the paragraphs referred to above relating to sexual harassment in the Initial and Latter Periods and is specifically considered at paragraphs 181 and 184.
11. The respondent had an opportunity to address these issues, both in its evidence, statement and at the hearing. To the extent that the issues of the claimant's performance was relevant, it was addressed in the paragraphs referred to above.
12. While the respondent may disagree with the conclusions reached by the Tribunal, grounds 3 and 4 do not identify any basis that in the interests of justice make it necessary to reconsider the judgment and there are no

reasonable prospects on these grounds of the original judgment being varied or revoked.

13. Ground 5 – this issue is addressed at paragraphs 44 and 194 – 197. The respondent had ample opportunity to challenge the basis of the claimant's allegation that she was entitled to this commission in its evidence, background documents and at the hearing. Whilst the respondent may disagree with the conclusions reached by the Tribunal, this ground does not identify any error in law or failure in procedure or other basis where it is necessary in the interests of justice for the judgment to be reconsidered or where there are reasonable prospects of the original decision being varied or revoked.
14. Ground 6 – the issue of the claimant's background in this regard is of very limited relevance to the issues in dispute and that the Tribunal had to determine. The respondent was able to deal with this issue at the hearing (despite its limited relevance) and this ground does not disclose any basis where it is necessary in the interests of justice for the judgment to be reconsidered or where there are reasonable prospects of the judgment being varied or revoked.
15. Ground 7 – the Tribunal addressed the lack of sales to the extent that it was necessary to determine the issues between the parties (see above). As per the contractual terms agreed between the parties, the respondent had a legal obligation to make the payments required by the contract. This ground is irrelevant to the issues determined by the Tribunal and discloses no basis where it is necessary in the interests of justice to reconsider the judgment or where there are reasonable prospects of the judgment being revoked or varied.
16. Ground 8 – the issue of the claimant's failure to attend the Mela was, to the extent that it was relevant to the issues in dispute, addressed at paragraphs 33 – 36 of the judgment. This ground is of very limited relevance to the issues to be determined between the parties and the ground raises no basis upon which is necessary in the interests of justice to reconsider the judgment or where there is a reasonable prospect of the judgment being varied or revoked.
17. Ground 9 – the claimant resigned on 15 September 2017 and therefore to convene a meeting to discuss the claimant's grievances was of limited relevance to the issues that the Tribunal had to determine. It is not that Tribunal failed to give the respondent appropriate "credit" in this regard, it is simply that the issue was of limited relevance to the underlying allegations.
18. Again, this ground is not a basis making it necessary in the interests of justice for the judgment to be reconsidered and is not a basis such that there is a reasonable prospect of the judgment being varied or revoked.
19. Ground 10 – it was established by the respondent and accepted by the claimant that she posted in negative comments on social media about Mr Norminton and the respondent. The approach to the Tribunal's judgment does not condone such behaviour. This issue was not relevant to the

matters to be determined between the parties and so was not addressed by the Tribunal. This is not a reflection of any view either way on the claimant's conduct in this regard, it is simply that this issue was not relevant to the case.

20. Again, this ground discloses no basis for a reconsideration.
21. Ground 11 – in determining this aspect of the claimant's case, appropriate consideration was given to the underlying evidence and the testimony given at the hearing and Mr Rahman's challenges in cross-examination. The events of 9 August 2017 were addressed in paragraphs 55 – 59 and 153 – 171.
22. The Tribunal's duty is to determine the relevant issues in line with the burdens and standards of proof applicable to and Employment Tribunal. These are different to the equivalent requirements for criminal allegations.
23. This ground discloses no basis upon which it is necessary for the interests of justice to reconsider the judgment and discloses no reasonable prospect on which the judgment would be varied or revoked.
24. For these reasons, the respondent's application for a reconsideration of the judgment is refused.

---

Employment Judge Bauer

Date 31 May 2018