EMPLOYMENT TRIBUNALS

Claimants: 1. Mrs J Leonard
                     2. Mr D Leonard

Respondent: Graham Anthony Andrews and Tracey Jane Andrews t/a "The Abbey"

JUDGMENT

Upon reconsideration, paragraphs 5 and 6 of the judgment sent to the parties on 27 February 2019 are confirmed.

REASONS

Introduction

1.   In paragraphs 81-83 of the reasons sent to the parties on 27 February 2019 I recorded that the claimants had not brought to the hearing the payslips on which their calculations of gross and net pay were based. That left the possibility of an application for reconsideration by the respondent if the true figures were different. At the hearing the claimants were ordered to provide copies of the relevant payslips to the respondent by 15 February 2019 to enable the respondent to consider it further.

2.   The application for reconsideration was made by the respondent on 28 February 2019. It was supplemented by further information on 12 April 2019. Broadly it was argued that the figures were too high for each claimant because the last two payslips for the weeks of 7 and 14 April 2018 had been omitted, and because the club's records showed three weeks in the twelve preceding dismissal where the claimants received zero pay.

3.   In resisting the application the claimants each provided three copy payslips for tax periods 44 – 52, that being a period of twelve weeks because they were paid four-weekly.   The covering letter acknowledged that the figures provided at the hearing should have been a little lower because this was a thirteen week period not a twelve week period.

4.   I have considered the position again in the light of both sides' representations.

The Law

5.   An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).   The interests of justice include the principle of finality of judgments: they should not be reopened simply because a party now has evidence which it could reasonably have presented at the time.   Reconsideration must be undertaken in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly.   Achieving finality in litigation is part of a fair and just adjudication.

My Decision

6.   I reject the respondent's case on the correct figures.   No documents have been provided, just figures apparently drawn from the club's records.   These could have been obtained and provided at the hearing.   They do not tally with the payslips in any event. I prefer to go by the payslips which have been produced.

7.   I do not agree with the claimants that the payslips are monthly pay and therefore show a thirteen week period.   Each payslip covers four weeks and there are three of them.   Treating this as a twelve week period produces average figures for gross and net pay for each claimant which match those in paragraphs 85 and 86 of the reasons accompanying the judgment.

8.   I reject the respondent's argument that the payslips cover the wrong period. For each claimant they go to week 52, which will be the last week of the financial year.   The claimants were hourly paid and the club closed on 8 April 2018, three days into the new financial year.   It would not be just to treat their earnings for these purposes as reduced by the absence of payments in the few days between the club closing and the formal termination of their employment.

9.   For these reasons I confirm the figures in the judgment sent out to the parties in February 2019.

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Employment Judge Franey

3 May 2019

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JUDGMENT AND REASONS SENT TO THE PARTIES ON

08 May 2019

FOR THE TRIBUNAL OFFICE