EMPLOYMENT TRIBUNALS

Claimant: Mr I McFarlane

Respondent: Utility Alliance Limited

Considered in Chambers: **On:** 24 September 2018

Before: Employment Judge S A Shore

JUDGMENT

1. The claimant's application dated 7 September 2018 for reconsideration of the judgment is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, because:

    1.1. Written reasons for my judgment of 31 August were sent to the parties at the request of the claimant after I had delivered them to the parties orally at the end of the hearing on 31 August 2018.

    1.2. The claimant had a default judgment against the respondent for breach of contract and unauthorised deduction of wages. The hearing on 31 August was to determine remedy only.

    1.3. I permitted the respondent to make representations about remedy following the decision in **Office Equipment Systems Limited v Hughes [2018] EWCA Civ 1842** in the Court of Appeal.

    1.4. The result of the remedy hearing was that I awarded the claimant no compensation for breach of contract or unauthorised deduction of wages for the reasons I set out at the hearing and in the subsequent written judgment and reasons.

1.5. Rule 70 of the Employment Tribunals Rules of Procedure 2013 allow a party to apply for a reconsideration of any judgment where it is necessary in the interests of justice to do so.

1.6. The application for reconsideration was made in a one-line email from the claimant dated 7 September 2018 that stated "Wont to appeal this evidence that the chap mr moore lying this was one deal that I no company payed I received nothing" (sic).

1.7. He submitted a contract between Total Gas & Power Ltd and Kashmir Store Limited dated 13 March 2018 and an undated letter stating that he wished to appeal the judgment. In the letter, he stated that the company had lost the case and he had been awarded the judgment. He argued that he had signed a commission statement but had been sacked for no reason other than the company "keeping the deals for themselves".

1.8. He said he would provide evidence that Mr Moore (the director of the respondent who had represented it at the remedy hearing) was telling lies.

1.9. He said that the contract provided tells me that all the company does is steal deals.

1.10. He said he had not been offered a lift to the station and a bus ticket home when he had been sacked and his claim should be paid as the respondent had not responded on time and I should have made an example of them.

1.11. The Tribunal office replied to the claimant on 11 September 2018 and asked if he wanted a reconsideration or an appeal. If it was the latter course, he was directed towards the Employment Appeal Tribunal (EAT). He was also asked if he had copied the respondent into the application.

1.12. The claimant replied on the same date with a one-line email stating "I wont this reconsidered by the judge .sent you the reason why and doc to back up claim." (sic). He did not confirm whether or not he had copied the respondent into his correspondence.

1.13. Rule 71 requires an application for reconsideration to be copied to all parties. There is no proof before me that this has been done by the claimant. I could therefore dismiss the application for failing to copy in the respondent.

1.14. I note from my reasons for the judgment on remedy in this case that on 29 August 2018, the claimant emailed the Tribunal to say that he did not have the funds to attend the hearing on 31 August 2018. His email gave details of 8 accounts that he says he was owed commission on by the respondent totalling £5,000.00. No paperwork was filed by the claimant to substantiate the claim.

1.15. He also claimed £100.00, which he said he had to pay in bus fare to return home after his dismissal.

1.16. The Tribunal wrote to the claimant on 29 August directing him to send written representations to the Tribunal that clearly set out the method by which he calculated the commission he is due from each of the deals he negotiated. The claimant was advised that the Tribunal would have to see details of the contract the claimant had with the respondent and the method of calculating commission.

1.17. The letter also advised the claimant that if he required an adjournment of the hearing, he should apply in writing or by email. He made no application.

1.18. I was not shown any correspondence from the claimant before calling the case on.

1.19. I have dealt with my findings of fact in the reasons for the remedy judgment. I made findings about the terms of the contract between the claimant and the respondent. I made a finding of fact as to whether the claimant had been offered a lift to the station and his fare home.

1.20. The default judgment expressly told the claimant that he would have to bring documents to substantiate his claim and he failed to do so. That advice was repeated in the Tribunal's letter to the claimant of 29 August 2018.

1.21. The contract that I have referred to above does not raise any issue of evidence that I did not deal with at the remedy hearing. It could and should have been produced. The claimant does not explain how it proves his case, which I have already found to have failed to show on the balance of probabilities that he was entitled to any compensation or damages.

1.22. He asserted that he had not been offered a lift to the station or his fare home, but the respondent produced a minute of the dismissal meeting that recorded the offer.

1.23. I therefore find no prospect whatsoever of the original decision being varied or revoked and refuse it under the provisions of Rule 71(1).

Employment Judge S A Shore

Date 24 September 2018