EMPLOYMENT TRIBUNALS

Claimant: **Mr D Spence**

Respondent: **Grimsby Institute of Further and Higher Education**

UPON APPLICATION made by letter dated 2 April 2019 to reconsider the judgment dated 20 March 2019 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

1. The judgment is varied so as to award the Claimant a basic award. The Respondent is ordered to pay the Claimant the sum of £733.50.
2. The Claimant's remaining applications to reconsider the Judgment are refused.

REASONS

Background

1. Written reasons for the judgment on remedy were sent to the parties on 30 March 2019. The claimant applied on three grounds for reconsideration of the judgment by an email dated 2 April 2019. My provisional view was set out in an email to the parties on 25 April 2019 and parties were asked to confirm if the application could proceed without a hearing. On 30 April 2019 the respondent replied objecting to the application on all three grounds. Both parties confirmed they were content for the application to proceed without a hearing.

2. The Employment Tribunal Rules of Procedure 2013 provide as follows:

70 Principles

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.

Ground one

3. The claimant sought reconsideration of the daily rate sum of £110 that was used to calculate the claimant's mitigation of loss through supply teaching.

4. The figures brought forward in the application for reconsideration are new figures. Evidence has already been heard and a rate determined based on that evidence. It would not be in the interest of justice to allow the claimant to revisit that evidence. Even if it were the respondent would have to have an opportunity to challenge the figures which would in effect require a re-hearing. The chance to advance evidence was at the remedy hearing.

5. Further, the remedy Judgment provided that parties were directed to try and agree grossing up failing which a further remedy hearing would be sought (paragraph 34). No such further hearing was sought and the parties reached an agreement during discussions. It is not in the interests of justice to interfere with the agreement that was reached.

6. I do not consider the case of **Williams v Ferrosan [2004] IRLR 607** to be applicable to this case. In that case the parties and the Tribunal were under a misapprehension that there was no tax liability. That did not happen in this case. The Tribunal was aware there would be a need to gross up and asked the parties to try and agree.

Ground two

7. The parties agreed that no basic award was due (see paragraph 6 of the remedy judgment). This was an error. The claimant was so entitled to a basic award under S119 ERA 1996. Although a basic award can be reduced in certain circumstances there are no findings in either the liability or remedy judgment upon which any reduction is remotely likely to have been made. As the entitlement is one of statute I conclude it is in the interest of justice to vary the judgment so as to award the claimant his basic award.

Ground three

8. The claimant seeks reconsideration of the finding of fact that the claimant will find alternative work by September 2019, with reference to the Tribunal having taken into account the agreed reference acknowledging the reason for the claimant's termination of employment (paragraph 22). The claimant submits this should not have been a factor placing the claimant at an advantage in the job market.

9. The difficulty with this position is that the claimant had advanced a case that the references provided by the respondent had hampered his search for work. Findings of fact were made taking into account the evidence put forward by the claimant. It is not in the interests of justice for the Tribunal to reconsider this part of the judgment as the claimant is inviting the Tribunal to consider some evidence (that the reference hampered his job search) but disregard the likelihood of a later agreed reference on his

prospects.

10. Further, in respect of the percentage chance submissions this is an entirely new matter being raised. No evidence or submissions were heard in this regard. It would not be in the interests of justice to allow the claimant to open and advance a new line of argument through the vehicle of reconsideration.

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Employment Judge Moore

4 June 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE