



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr A B Sesay

**R. Durtnell & Sons
Limited**

and

JUDGMENT

The Claimant's application for reconsideration of the Judgment dated 28 March 2019 is refused.

REASONS

- 1 Following a Hearing on 1 February 2019 and the production of my Judgment from that hearing, dated 28 March 2019, the Claimant sent a letter dated 8 May 2019 asking for a reconsideration of the decision made. I was made aware of the Claimant's letter on 20 May 2019.
- 2 I have now had an opportunity to read the Claimant's application (his letter contains 8 numbered paragraphs), my notes of the hearing and my judgment dated 28 March 2019.
- 3 I have also had regard to Rules 70 – 72 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1.
- 4 Pursuant to Rule 70, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. Rule 71 provides that an application for reconsideration shall be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were

sent (if later) and shall set out why reconsideration of the original decision is necessary.

- 5 The Judgment was sent to the parties on 27 April 2019. Therefore the Claimant's application dated 8 May 2019 was presented in time.
- 6 Pursuant to Rule 72 if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, 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.
- 7 Accordingly, I now turn to the grounds for reconsideration, as set out by the Claimant in his application, to consider whether there is a reasonable prospect that it will be necessary in the interests of justice to reconsider the judgment.
- 8 In his letter of 8 May 2019, the Claimant appears to accept that his dismissal was not procedurally unfair. He says that he agrees that the Respondent took all necessary steps in that regard. He then seeks to repeat points made during the hearing including that he did not receive proper training and that if he had received proper training, he would not have challenged his dismissal.
- 9 The Claimant also refers to parts of the evidence which were before me during the hearing. For example, he comments upon the lack of a risk assessment for the counterbalance forklift and the fact that there were cameras on the site.
- 10 In summary, the Claimant's latest letter seeks to reargue matters which were before me at the hearing on 1 February 2019. As set out in my Judgment, the Claimant's evidence changed on a number of pertinent matters through the course of that hearing. He accepted he signed the induction record in 2016, he accepted he attended some training in the use of the telehandler and I was satisfied that a relevant risk assessment method statement was provided to the Claimant before the accident and that he signed it before the accident (see paragraphs 15 - 18 of the Judgment dated 28 March 2019). Contrary to that method statement and the Respondent's Health and Safety Policy Statement, the Claimant moved the telehandler in an unsafe manner causing injury to a colleague. The Claimant accepted the contents of the Respondent's investigation report into the accident.
- 11 Having considered the points raised by the Claimant and the entirety of his application, it is my view that there is no reasonable prospect of the original decision being varied or revoked, on the basis of the interests of justice, and I therefore refuse the application.
- 12 Whilst I note and acknowledge the content of the Claimant's letter and the points he seeks to make, I do not consider that this submission discloses any proper ground for a reconsideration.

- 13 In these circumstances it is not in the interests of justice for the Judgment to be varied or revoked. To do so would be to give the Claimant a second bite of the cherry or, in other words, a second opportunity of giving evidence on the matters considered at the full merits hearing. It was to be expected that the Claimant would provide all relevant evidence on the day of the Hearing, both documentary and oral. In my judgment, it is not in the interests of justice to extend to the Claimant additional opportunities to present his case by way of this application for a reconsideration.
- 14 I refuse this application.

Employment Judge Harrington
26 June 2019