



EMPLOYMENT TRIBUNALS

Claimant: Samira Cookson

Respondent: Hall Cleaning Services Limited

JUDGMENT ON RECONSIDERATION

In exercise of the power conferred by Rule 70 and 72 of the Rules of Procedure set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal refuse the claimant's application for reconsideration made by way of her email of 15 May 2019 and confirm the decision on remedy made on 14 May 2019.

REASONS

1. The claimant's email of 15 May 2019 was treated as an application for reconsideration. Directions were sent to the parties by way of an order of 22 May 2019 requesting information and inviting representations from the parties. The claimant provided further representations under cover of a letter dated 22 May 2019 and the respondent provided its own representations under cover of an email of 26 June 2019. The parties were in agreement that the application for reconsideration should be considered on the papers and the tribunal were of the view, taking account of the overriding objective, that it was not necessary in the interests of justice to have a hearing. Having made that decision, the tribunal considered the correspondence of the parties together with the pension statement provided by the claimant on 15 May 2019 and the pensions statement provided by the respondent on 22 June 2019. Following its deliberations, the tribunal made the following findings.

2. This case was listed for a hearing to determine both liability and remedy on 20 March 2019. The claim was for unfair dismissal and judgment was given orally on that date in favour of the claimant. There was insufficient time to determine remedy at that hearing and therefore the case was listed for a remedy hearing to take place on 14 May 2019. The tribunal sent an order to the parties on 25 March 2019 to notify them of that hearing and gave directions for the preparation of that hearing, including

an order that the parties provide all the documentation that they intended to rely upon in relation to remedy.

3. The tribunal was not provided with any documentation relating to the claimant's pension at either the original hearing or at the later remedy hearing. Having taken oral representations from both parties on the point, the tribunal ordered that the claimant be compensated for loss of employer pension contributions at a rate of 11% of her salary from 15 May 2018 to 31 December 2018. The tribunal ordered the respondent to pay the claimant £29.74 a week for a period of 33 weeks, as part of a total award in the sum of £5279.99. Judgment on remedy was given orally at the hearing on 14 May 2019 and the written judgment was sent to the parties on 16 May 2019.

4. The day following the hearing, 15 May 2019, the claimant sent an email to the tribunal with a pension statement from Scottish Widows attached to it. This was the email which was treated as an application for a reconsideration of the judgment on remedy. The statement from Scottish Widows states that the claimant received £320.83 a month during the relevant period prior to her dismissal, amounting to £74.04 a week. The respondent appears to accept that this sum is correct but goes on to state that "over payments" were made to the claimant's pension in the total sum of £6737.43 and submits that these should be accounted for when assessing the claimant's compensation. This is consistent with evidence given at the hearing by Mr Ashurst to the effect that overpayments or "payments in advance" were made to the claimant's pension. The respondent's position is that the claimant has been "over paid" in the sum of £6737.43 and in effect therefore she has been over compensated.

5. An employment tribunal is empowered to review a judgment based upon new evidence in only limited circumstances. These circumstances used to be prescribed under section 35(3)(d) of the old Rules of Procedure which provided that a review may be carried where "*new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time.*" Those provisions were repealed by 2013 Rules which provide only that a tribunal may "*reconsider any judgment where it is necessary in the interests of justice to do so.*" However, the principles which underlay the earlier rules still remain. In Ladd v Marshall [1954] 3 All ER 745 it was held that it must be shown that to "*justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial...*"

6. The explanation given by the claimant for not obtaining the pensions evidence in advance of the remedy hearing is not compelling. She states in her email of "*In my original schedule of loss...the pension was never challenged. So naively I assumed as the respondent never contested it, or proved otherwise, he was in agreement.*" It is for the claimant to prove her loss and she had adequate opportunity to produce to the tribunal all documentation necessary to support her remedy claim, including in relation to her pension, both before the original hearing and between the decision on liability on 20 March 2019 and the decision on remedy on 14 May 2019. It is apparent that the pensions information could have been readily obtained since the claimant was able to obtain it and provide it to the tribunal within 24 hours of the judgment on remedy being handed down.

7. It cannot therefore be said that new evidence had become available since the conclusion of the hearing whose existence could not have been reasonably known of or foreseen at that time. The respondent did not signify any agreement to the claimant's remedy calculations and it was for her to prove her case, including the extent of her pension loss. The evidence was readily available to the claimant prior to the hearing and she did not take any reasonable steps to obtain it. While the tribunal can make allowance for the fact that the claimant was self-represented it was not, in this case, in the interests of justice to allow the claimant to rely upon further evidence produced after the judgment date which was readily available to her before it. Nor, does it appear to be conclusive that any additional sums were due to the claimant since the respondent maintains that the claimant was overpaid in her pension entitlement; no assessment was made as to the substantive merit of that position beyond observing that there is an argument to that effect.

8. Having considered all circumstances of the case, the tribunal held that the original decision on remedy be confirmed. There must be finality in litigation.

Employment Judge Humble

Date: 22nd August 2019

JUDGMENT SENT TO THE PARTIES ON

23 August 2019

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