EMPLOYMENT TRIBUNALS

Claimant: Mr A MacGuire

Respondent: Mrs A Kaponas

RECONSIDERATION JUDGMENT

The respondent's application for reconsideration is refused.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(1). The reconsideration application is refused because there is no reasonable prospect of the original decision being varied or revoked.

2. The two-day final hearing in this case took place in July 2019 in Nottingham before me – Employment Judge Camp – sitting alone. I gave an oral decision with reasons. Written reasons were then requested and were sent to the parties. On 27 July 2019 – within the 14 day time limit – the respondent made a reconsideration application by email, through her son and representative, Mr L Kaponas. I refer to my Judgment and Reasons and to the respondent's application.

3. Where practicable – and it is practicable here – any application for reconsideration must initially be considered by the Employment Judge who made the original decision, i.e., in this instance, by me.

4. I don't intend to address each and every point the claimant makes in his reconsideration application. Generally:

    4.1 in the application, Mr Kaponas is doing little more than re-stating points he made during the hearing. They were points that I considered but in relation to which I disagreed with him and the respondent. I still disagree;

    4.2 even if I had accepted all the allegations of misconduct made against the claimant during the hearing – and I did not – this would not have been a fair dismissal, for procedural reasons. The respondent's procedural difficulties were, as I understand it, mentioned to her at both preliminary hearings. I explained them to her and to Mr Kaponas during the final hearing. They are referred to in the Reasons for my decision. To repeat myself (from paragraphs 87 and 90 of the Reasons): "*there is no question that this was unfair …. because of the total absence of anything*

approaching a fair procedure. I would be making a legal mistake – I would be erring in law in lawyer's terms – if I found anything else" and "*Just sacking the claimant, without warning or discussing the situation with him, or anything of that kind, cannot possibly be fair*";

4.3 to be clear, "*without warning*" refers to the lack of any warning to the claimant of his imminent dismissal following the incident on 4 June 2018 that seems to have led to him being dismissed. I am well aware of, and mentioned in my decision, the respondent's allegation that the claimant was given a number of disciplinary warnings over the years;

4.4 the fact that the award represents a high percentage of the respondent's business's turnover is, I am afraid, a legally irrelevant consideration. I decided what the facts were. I appreciate that the respondent and Mr Kaponas disagree with what I decided, particularly in relation to what the claimant should have been paid and whether the claimant was guilty of any relevant misconduct, but their disagreement is not a proper basis for me to change my decision. Nothing in the reconsideration application makes me think my decision might have been wrong. Based on the facts as I decided they were, I could not have awarded less than I awarded;

4.5 as I mentioned during the hearing, the tribunal should not be told about the contents of any settlement negotiations when deciding issues in the case (potentially other than costs). Apart from anything else, they are irrelevant unless there is a binding settlement agreement in accordance with section 203 of the Employment Rights Act 1996. There was no binding settlement agreement here.

2601685/2018

30 August 2019

EMPLOYMENT JUDGE CAMP

SENT TO THE PARTIES ON

4 September 2019

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FOR THE TRIBUNAL OFFICE