



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Respondent

Mr S Ward (1) and Mr B Sullivan (2)

Ann's Cottage Warehouse Ltd

Employment Judge Matthews

Judgment on Application for Reconsideration

Acting in accordance with rule 72 of the Employment Tribunals Rules of Procedure 2013 (the "Rules") the Tribunal refuses the Respondent's application for a reconsideration of the Judgment sent to the parties on 1 November 2019 (the "Judgment"). The Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked.

Reasons

Introduction and applicable law

1. The Tribunal must consider this application by reference to rules 70, 71 and 72 of the Rules. So far as they are applicable they read 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.

71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) 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.

72 Process

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), 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. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations."

2. On 1 November 2019 the Judgment was sent to the parties. On 15 November 2019, within the fourteen day time limit, the Respondent's application for reconsideration was received by the Employment Tribunals.

Conclusions

3. The Respondent's application is set out in numbered paragraphs and the Tribunal will use the same numbering for ease of reference.

1.1. The statement "*That the Claimants' decision to resign was based upon a misconceived belief that Andrew Nuttall was an Employee of the Respondent, and should have been subject to the same disciplinary procedure*" is partially factually incorrect. It is also an overly narrow statement of the issue. It is partially factually incorrect because Ms Westwood had written to the Claimants explaining that Mr Nuttall was not an employee during the disciplinary appeal process (see Judgment paragraphs 50 and 53). As far as overly narrowing the issue is concerned, on the facts found in the Judgment the Tribunal concluded that the reason why the Claimants resigned was as set out in paragraph 66 of the Judgment.

1. II., III. and IV. This is consistent with the Judgment save that the Tribunal understood the name of the company of which Mr Nuttall was a director to be Ann's Cottage (Wadebridge) Ltd. That, however, does not affect the Judgment.

1.V. The Tribunal did not conclude that the Respondent had “*power to impose a disciplinary sanction against a non-employee*”. The Tribunal’s relevant findings and conclusions are set out in paragraphs 40, 50, 51, 52, 53 and 73-78.

1.VI., VII and VIII. See paragraphs 76 and 77 of the Judgment in particular. The Tribunal notes that the references in paragraph 76 to Mr Nuttall being a “*director*” could be read as references to Mr Nuttall being a director of the Respondent Company. They are not. They are references to Mr Nuttall being a director of Ann’s Cottage (Wadebridge) Ltd (in fact, Ann’s Cottage Surf Shop (Wadebridge) Ltd (see paragraph 17 of the Judgment). It should be noted that Mr Harris was a co-director of Mr Nuttall’s in Ann’s Cottage Surf Shop (Wadebridge) Ltd.

2. The Tribunal did not “*fail to grasp the gravity of what it was that the Claimants’ did*”. See paragraph 85 of the Judgment in particular.

4. In the Tribunal’s view there are no grounds to support any reasonable prospect that the Judgment will be varied or revoked.

Employment Judge Matthews

Dated: 12 December 2019

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