



EMPLOYMENT TRIBUNALS

Claimant
Ms. S. Ghosh

v

Respondent
Innvotec Ltd

London Central (on the papers)

On: 17 February 2020

Employment Judge Mason

RECONSIDERATION DECISION

The Respondent's application for reconsideration of the judgment sent to the parties on 11 December 2019 ("the Judgment") is accepted to the extent of clarifying para 68.2.

It is not necessary in the interests of justice to reconsider the Judgment on any other grounds; there is no reasonable prospect of it being varied or revoked under Rule 70 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

REASONS

1. A Tribunal has power to reconsider any decision where it is necessary in the interests of justice to do so (Rule 70 ETs (Constitution & Rules of Procedure) Regs 2013 ("the Rules"). On reconsideration, the decision may be confirmed, varied or revoked; if revoked it may be taken again.
2. Following a full merits hearing on 6 December 2019, I held that the Claimant's claims of unfair dismissal, statutory redundancy payment, breach of contract and unlawful deduction from wages succeeded. I gave a Reserved Judgment with full written reasons on 11 December 2019.
3. On 24 December 2019 the Respondent wrote to the Tribunal challenging parts of my judgment. I have only today been made aware of this letter.
4. Unfair dismissal: The Respondent challenges my decision that "*due process*" was not followed. I have explained in my judgment (paras. 66.2 and 66.3) why the Claimant's dismissal was procedurally unfair due to lack of consultation and

also why I reduced the Compensatory Award to 4 weeks pay (para. 66.4(ii)b). The Respondent's challenge on this point amounts to no more than a disagreement with my findings of fact and it is not in the interests of justice to review the Judgment on this basis.

5. Unlawful deductions from wages: The Respondent challenges my decision to award the Claimant accrued holiday pay of £2,137 on the basis the Claimant "*very rarely came into the office to work during 2019 and, as such, her whereabouts were unknown*". I accepted at the Hearing the Claimant's evidence that she did not take any holiday during the period 1 January to 31 May 2019 (para. 58) and I have explained in para. 68.1 of my judgment why I was awarding her holiday accrued during this period. Again, the Respondent's challenge on this point amounts to no more than a disagreement with my findings of fact and it is not in the interests of justice to review the Judgment on this basis.
6. The Respondent seeks clarification of the words underlined (for the purposes of this decision only) in para. 68.2
 - 6.1 "68.2 *Arrears of salary:*
 - (i) *The Respondent accepts that the Claimant is owed salary for the period 10 February to 31 May 2019. Mr. Marsden says this has not been paid because the Respondent has received advice from its accountants that this should be paid to HMRC as previous payments have been paid without appropriate deductions for PAYE income tax and NICs. However, this is not a defence as the Respondent and in fact payment has been paid to HMRC.*
 - 6.2 The request is justified and I apologise for the typing error. The relevant sentence should read:
"However, this is not a defence and the Respondent has not in fact made payment either to the Claimant or to HMRC"
7. The Respondent raises a number of points with regard to income tax and NI contributions:
 - 7.1 The Respondent says:
 - (i) The Judgment "*... was utterly silent on how Innvotec or the Court could have the necessary confidence that HMRC would ultimately receive the deductions due on the £51,367 of gross salary that the Claimant had already received from Innvotec*".
 - (ii) If the Claimant returns to India "*... it is highly likely that HMRC would not receive any monies due to it under Income Tax or NI before she goes*".
 - 7.2 The Respondent seeks "*directions as to who, the Claimant or the Respondent, is responsible for making deductions and payments to HMRC on the £51,367 of gross salary paid to date*".
 - 7.3 I have made it clear in my Judgment which sums I have awarded are payable without any deductions and which are subject to deductions. Any dispute between the Claimant and the Respondent with regard to actual or potential challenges by HMRC is not a matter for this Tribunal. Furthermore, it is not a matter for this Tribunal to determine on who is responsible for making payments to HMRC in respect of previous payments made to the Claimant.

8. In conclusion, with the exception of clarifying para. 68.2. I refuse the application for a reconsideration because there is no reasonable prospect of the Judgment being varied or revoked. The Respondent is effectively asking for a second hearing of certain parts of this case. It is in the public interest that there should be finality in litigation and the interests of justice apply to both sides. As the EAT decided in **Fforde v Black EAT 68/60**, the interests of justice does not mean *“that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. The ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”*. This is not the case here.

Employment Judge Mason
17 February 2020

Sent to the parties on:
18/2/2020

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For the Tribunal Office

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