



EMPLOYMENT TRIBUNALS

Claimant: Mr W Mather

Respondent: Vision Security Group Limited t/a VSG

JUDGMENT

The claimant's application dated 22 February 2020 and 6 March 2020 for reconsideration of the judgment sent to the parties on 20 March 2020 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

The Issues

1. The claimant has applied for reconsideration of the tribunal's judgment which was delivered orally on 21 February 2020. In that judgment the claimant's claim of unfair dismissal was dismissed and his claim of unauthorised deductions was successful. Remedy is still to be determined. Written reasons were requested by the respondent and sent to the parties with this judgment.
2. The claimant raised a number of matters which he asked the Tribunal to reconsidered. I have grouped these into categories to assist in addressing each of the claimant's points, these are (i) the evidence, (ii) conduct of the respondent and their representatives; and (iii) failing to deal with an issue:

The Law

3. The Employment Tribunal (Constitution & Rules of Procedure) Regulations provide at Schedule 1 Rules 70 to 73 the rules and process by which judgments of the Tribunal may be reconsidered.

70. 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. 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. (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 Employment 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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

4. The approach to be taken to applications for reconsideration was set out in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
 - a. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
 - b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
 - c. give reasons for concluding that there is nothing in the grounds advanced by the claimant which could lead him to vary or revoke his decision.

Decision

The evidence

5. The claimant raises a number of matters where he considers that the Tribunal reached the wrong decision based upon the evidence that was presented. These were:
 - a. That the respondent's witnesses were not honest;
 - b. That the appeal manager was investigating the claimant prior to him dismissing the appeal and so was not impartial;
 - c. That the reason for this was so that he could challenge the claimant regarding HMRC testimony on his website and that this wasn't mentioned by the Tribunal and was contrary to the finding that the Appeal manager was impartial;
 - d. That the claimant at page 527E of the bundle agreed that his business delivered security guarding;
 - e. That there was no evidence to support that there were failed delivery slips and that the claimant had at the hearing, two cards requesting postage be paid but no one asked him for these;
 - f. That the claimant didn't sign the investigation minutes because he couldn't read them, it was because he didn't agree with them;
 - g. That the Tribunal believed the respondent's evidence over the claimant's documentary evidence and didn't address some evidence.
6. In reaching a decision the Tribunal considers all evidence that it believes is relevant to the issues which it must decide. This does not require it to make findings upon all evidence with which is it presented. Some of the issues which the claimant raises fall into that category.
7. There was no finding by the Tribunal that any witnesses were not honest. Sometimes recollections can fade and change with time. Although there were occasions where the respondent's witnesses' statements, oral evidence and documentary evidence did not coincide, this was equally true of the claimant's evidence and the Tribunal's findings were such that it did not conclude that any witnesses were untruthful. Although no findings were specifically made by Tribunal upon any investigations which the Appeal Manager undertook before he heard the appeal, the fact that he looked into the claimant's website and its reference to testimonials from HMRC would not lead to the me to conclude that he was not impartial or that there are reasonable prospects of my judgment being varied or revoked.
8. I have reviewed page 527E of the bundle and do not agree that this is the claimant agreeing that his business is one of security guarding. This is the set of answers which I refer to in my written reasons at paragraph 41 as 'evasive'.
9. It is correct that one of my findings was that the investigation meeting notes were not signed by the claimant because the claimant could not read them. I agree that this is inaccurate. Having reviewed the evidence upon this issue, the claimant alleges that he did read the notes but refused to sign them as they were written as though he was admitting wrongdoing. He does not suggest that he told Mr Thomson that was the reason, or that the minutes were fabricated. Mr Thomson's evidence was that the claimant refused to sign them as they were not verbatim but would not say what he disagreed with. The claimant was provided

with a copy and asked to email Mr Thomson with any amendments. This he did. My findings of fact confirm that the claimant was suspicious of Mr Thomson and the notetaker and for the reasons set out in my written reasons at paragraph 19, I concluded that the notes were a reasonable summary of that meeting. Even if I accept that the reason that the claimant did not sign them was that they were written as though he was admitting wrongdoing, I conclude that they were still a reasonable summary of what was said at that meeting and I do not consider that the inaccuracy in my finding of fact would provide reasonable prospects of my decision that the claimant was fairly dismissed being varied or revoked.

10. My findings were that both letters (one sent recorded delivery and one sent first class) were not delivered to the claimant but that he was left cards by the Post office advising him that they could be collected, but he did not collect them. I had understood that one was not delivered because the claimant was not in to sign for it and the other because there was insufficient postage. The claimant says that he received two cards saying that there was insufficient postage paid and requesting that he collect them. If this was the position, and the claimant has evidence of this which was not produced to the Tribunal, it does not change the position that the claimant was aware that there were two letters waiting for him at the post office and he did not attempt to collect them. My decision however was based upon whether the actions of the respondent in proceeding with the disciplinary meeting in these circumstances, was within a band of reasonableness. I do not consider any additional evidence which the claimant may now be able to produce relating to the reasons for non-delivery of one of the letters, would provide reasonable prospects of my original decision being varied or revoked.

Conduct of the respondent and their representatives

11. The claimant complains about the conduct of the respondent and its witnesses and representatives during the hearing as follows:
 - a. That the claimant was intimidated by two of the respondent's managers who stared at him during his evidence;
 - b. That the claimant's representative left long pauses between questions which made him feel uncomfortable;
 - c. That the pupil barrister who was accompanying the respondent's representative during the hearing, hugged a member of the tribunal staff whom they seemed to know well;
12. The only issue which was brought to my attention during the hearing, and of which I was aware, was the complaint by the claimant that Ms White, the respondent's counsel left a long pause between questions asked in the afternoon of 20 February. I recall the claimant raising this concern, but did not consider that Ms White was doing anything other than gathering her thoughts before her next question. It lasted no more than a few questions and was mentioned to Ms White who no longer paused. I checked with the claimant that he was happy to continue and he confirmed he was.
13. Following receipt of the claimant's concerns about the Tribunal staff and the pupil barrister, I made appropriate enquires but no one amongst the

Tribunal staff were involved in or had any knowledge of this incident and knew either of the respondent's representatives.

14. There is nothing within these issues which I consider provide reasonable prospects of my original decision being varied or revoked.

Failing to deal with issues

15. The claimant considers that the Tribunal did not deal with the issue that the claimant was required to attend meetings outside business hours and outside Merseyside, thereby making the dismissal procedurally unfair. I do not specifically recall the claimant raising this issue as a matter which he relied upon as making his dismissal unfair. It does not appear in the list of factual issues to be decided nor in his closing submissions. It was raised as background in the claimant's evidence, but no more. If it was or had been raised as an issue, my view is that it was not a sufficiently serious procedural issue such that it provides reasonable prospects of my decision being varied or revoked.
16. The claimant contends that in respect of the number of shifts the claimant was due to work during his suspension, the Tribunal prevented the claimant from arguing that the Time Gate system was not a payroll facility used to calculate wages. Again, I do not recall the claimant seeking to challenge the purpose of the Time Gate system. There is no reference to this in my notes and had he sought to challenge the system, I believe I would have addressed it and not as he suggests, prevented the claimant from doing so. I made findings in respect of the shifts which the claimant was due to work during his suspension based upon the evidence and explanation of the system. I do not consider that there are reasonable prospect of my original decision being varied or revoked on this basis.

Employment Judge Benson

2 June 2020

Date

JUDGMENT SENT TO THE PARTIES ON

17 July 2020

FOR THE TRIBUNAL OFFICE