



EMPLOYMENT TRIBUNALS

Claimant: Mr A Batey

Respondent: Callerton Haulage Ltd

Before: Employment Judge A.M.S. Green

JUDGMENT ON RECONSIDERATION

The respondent's application dated 11 March 2020 for reconsideration of the judgment sent to the parties on 3 March 2020 is refused. There is no reasonable prospect of the original decision being varied or revoked,

REASONS

1. The respondent's application for reconsideration invites the Tribunal to reconsider its judgment in the interests of justice because it feels that the "minimum compensation would have warranted the punishment". In support of its application, the respondent refers to new evidence and in particular the Road Haulage Association audit ("RHA") that was conducted on the respondent. A copy of the audit was enclosed with the application and the Tribunal was referred, in particular, to section 1.5 at which is described as a "folder check of all our employees". Section 1.5 is said either to contain a contract or a Drivers Responsibility Letter in place of a full contract which is used for new starts/probation periods. The Tribunal was also referred to something called the "Starter Pack" which is alleged to be completed by the driver before any driving commences. It is claimed that the claimant completed the Starter Pack. It is also stated that there was a contract letter in the Starter Pack.
2. The Respondent also referred to pay slips which were always issued from the office. However, it is conceded that the Respondent cannot be 100% sure that payslips were in the office for the claimant.
3. In mitigation, the Respondent referred to the fact that human error had occurred.

4. The claimant has provided handwritten representations which were received by the Tribunal on 17 March 2020. He refutes the respondent's claim that he was provided with a contract and reminds the tribunal that the respondent admitted fault in failing to provide a contract and pays lips during the hearing.

5. Rules 70 -72 of the 2013 Tribunal Rules of Procedure state:

Rule 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 revoked it may be taken again.

Rule 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.

Rule 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.....

6. The issue that the respondent raises is that there was a contract of employment and, by implication it was a written statement of the claimant's employment, as required by Employment Rights Act 1996 section 1 ("ERA"). ERA, section 1 provides that, not later than two months after the beginning of an employee's employment, the employer must give the employee a written statement of his particulars. ERA section 1(3) provides that the written statement of must specify the following:

- a. The names of the employer and the employee.
- b. The date when the employment began.
- c. The date when the employee's period of continuous employment began.

7. ERA section 1(4) provides that the statement must also contain details of certain terms and conditions of employment as follows:

- a. The scale or rate of remuneration or the method of calculating remuneration.
- b. The intervals at which remuneration is paid.

- c. Any terms and conditions relating to hours of work.
 - d. Any terms and conditions relating to holidays.
 - e. Any terms and conditions relating to incapacity for work due to sickness or injury.
 - f. Any terms and conditions relating to pensions and pension schemes.
 - g. The length of notice which the employee is obliged to give and entitled to receive to terminate the contract of employment.
 - h. The title of the job which the employee is employed to
 - i. Where the employment is not intended to be permanent, the period for which it is expected to continue.
 - j. Either the place of work or where the employees to work in various places, an indication of that and the address of the employer.
 - k. Details of any collective agreements which directly affect the terms and conditions of the employment.
 - l. Details regarding any work outside the United Kingdom.
8. ERA, section 3 (1) & (5) provides that in addition to the above particulars the statement must also include:
- a. Details of any disciplinary rules applicable to the employee or referring employee to another document specifying such rules which is reasonably accessible to the employee.
 - b. Specifying any procedure applicable to the taking of disciplinary decisions to the employee.
 - c. Specifying a person to whom the employee can apply by way of an appeal if dissatisfied with any disciplinary decision affecting him.
 - d. Specifying a person to whom the employee can apply for the purposes of seeking redress of any grievance relating to his employment.
 - e. A statement whether a pensions contracting out certificate is in force for the employment.
9. Typically, the section 1 statement (as it is colloquially known) is contained in a contract of employment and is often called the contract of employment.
10. At the hearing, during the respondent's evidence, it was very clear that a contract of employment containing a section 1 statement was never issued to the claimant, let alone within the statutory period of two months from commencement of his employment.

11. The respondent now suggests that there is new evidence pointing to a contract of employment containing the section 1 statement which was provided to the claimant at or shortly after commencement of his employment. On reviewing that evidence, there is nothing to disturb the original decision for the following reasons:
 - a. Whilst section 1.5 of the RHA audit states that drivers are issued with contracts of employment and letters detailing their responsibilities, no evidence has been provided by the respondent to establish that a contract of employment containing the section 1 statement was actually provided to the claimant within two months of commencing employment. This would be a copy of the contract or section 1 statement and proof that it was issued to the claimant in the requisite time. Without such evidence, what is said in section 1.5 is no more than a bald, unsubstantiated statement and is of little evidential value.
 - b. Section 3.2 of the RHA audit states that contracts of employment are issued after the probation period has been completed. It claims that all items are signed for and filed in the employee file. No evidence has been provided by the respondent to establish that the contract of employment was issued after the probation period and that it was signed for by the claimant. Without such evidence, what is said in section 3.2 is no more than a bald, unsubstantiated statement and is of little evidential value.
12. The respondent has produced a file called "Andrew Batey Start Paperwork". There are various documents in that file but none of them are a section 1 statement containing the details required and set out in paragraphs 13-15 above.
13. Finally, the claimant does not accept that he was ever issued with a contract of employment during his employment. I have no reason to doubt that.

Employment Judge A.M.S. Green

Date 19 March 2020