



EMPLOYMENT TRIBUNALS

Claimant: Mr A Khan

Respondent: Govia Thameslink Railway Limited

JUDGMENT

The claimant's application of 18 May 2020 for reconsideration of the judgment, the written reasons for which were sent to the parties on 4 May 2019, is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. On 18 May 2020 the claimant made a written application for the judgment (written reasons) to be reconsidered.
2. Under the Employment Tribunal Rules of Procedure 2013 an application for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal may "reconsider any judgment where it is necessary in the interest of justice to do so" and upon reconsideration the decision may be confirmed, varied or revoked.
3. Rule 72 provides that an Employment Judge should consider the application to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal which heard it.
4. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a decision was wrongly made as a result of an administrative error, a party did not receive notice of the hearing, the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or

foreseen at the time. In Outasight VB Ltd v Brown UKEAT/0253/14/LA the EAT confirmed that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

5. The claimant seeks a reconsideration of part of the judgment which dealt with remedy in relation to the unfair dismissal complaint. The claimant challenges the Tribunal's finding that he contributed to his dismissal to the extent that it was just and equitable to apply a level of contribution of 25% to both the basic and compensatory awards; he complains that audio-visual evidence of his relevant conduct was not considered and was excluded by the Tribunal; and he seeks an order to be restored to his previous salary grade.
6. This application for reconsideration has no reasonable prospect of success for the following reasons.
 - (1) In relation to contributory conduct, the claimant's application is premised on the assertion that the Tribunal erred in finding that he contributed to his dismissal because the respondent contended at the liability stage that there was no dismissal and conceded that the claimant's conduct was not sufficiently serious to warrant dismissal. This approach is misconceived as neither contention nor concession precluded the Tribunal from concluding that the claimant's conduct contributed to the dismissal it found had taken place. The Tribunal concluded that the claimant's conduct was culpable and contributed to his dismissal to the extent that it was just and equitable to reduce the compensation awarded by 25% on account of its relevant findings which included (with reference to the paragraph numbers enumerated in the written reasons):
 - (a) The respondent's failure to take appropriate action to manage the dispute between the claimant and Ms Barber did not discharge the claimant from responsibility for his own conduct in respect of which his position as a team leader was highly relevant (paragraph 25).
 - (b) The claimant was warned that any escalation in this dispute with Ms Barber could lead to disciplinary action (paragraphs 27 and 38).
 - (c) The claimant ignored Ms Barber and they both acted in an unprofessional manner towards each other (paragraph 30). This included several occasions when they had failed to complete the safe count together (paragraph 39).
 - (d) The claimant made several comments at the grievance investigation meeting which substantiated the ongoing antagonism between himself and Ms Barber including that he would have punched Ms Barber had she been male and he had kept his interaction with her to the bare minimum. He also agreed that the atmosphere at work

had become disruptive. He remained uncommunicative and hostile towards Ms Barber (paragraph 53).

- (e) The respondent had sufficient evidence to conclude that this working relationship had broken down and had impacted on safe counts, their communication and team dynamics more widely (paragraph 72).
 - (f) The claimant's evidence at the disciplinary hearing substantiated that his conflict with Ms Barber had impacted on colleagues despite his denial to the contrary at the same hearing. This included his reaffirmation of his comment that he would have punched Ms Barber if she had been male (paragraph 82).
 - (g) The disciplinary officer concluded that there was a poor working relationship between the claimant and Ms Barber and the claimant had failed to discharge his duties as a team leader (paragraph 83).
 - (h) The appeal officer also concluded that the claimant had not fulfilled his duties as a team leader (paragraph 101).
 - (i) At the appeal hearing, when given the opportunity to do so, the claimant made no attempt to explain how he had attempted to resolve this issue with Ms Barber (paragraph 105).
- (2) In relation to the audio-visual evidence, this was available at the hearing but was not admitted into evidence. The Tribunal dealt with the evidence on liability and remedy consecutively. Mr Singh, for the claimant, applied for this evidence to be admitted at the liability stage. He was given the opportunity to make submissions as to its relevance and the Tribunal concluded that it was not relevant to the issues on liability. The claimant did not renew his application for this evidence to be admitted at the remedy stage.
- (a) Mr Singh applied to adduce audio-visual evidence at the start of day 3 of the hearing, during the liability stage. He submitted that this material was relevant to the dismissal process. He agreed that this material had not been considered by any of the decision-makers at the relevant times. The Tribunal reminded the parties that this was not a rehearing and it was required to assess the fairness of the putative automatically unfair / conduct dismissal on the basis of the material which was considered by the respondent at the relevant time. Mr Singh was invited to explain again why this material was relevant. He replied "I understand your point". He made no further submissions. The Tribunal therefore concluded that this material was not relevant to the issue of whether there had been a fair dismissal.

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- (b) The Tribunal read out its decision on liability at the start of day 9 of the hearing. This included the findings set out above in relation to the claimant's conduct. Before any decision was made on remedy the Tribunal considered the evidence on remedy and the parties were invited to make submissions including in relation to contributory conduct. Mr Singh did not apply for the audio-visual material to be admitted into evidence at this stage.
- (3) In relation to the claimant's salary band, the claimant's application is misconceived. The claimant seeks an order which is neither for reinstatement nor re-engagement and his application raises no discernible grounds for reconsideration.
7. For these reasons, I consider that the claimant's application for reconsideration has no reasonable prospects of success and it is refused under rule 72(1).

Employment Judge Khan

22/06/2020

JUDGMENT SENT TO THE PARTIES ON

22/06/2020

FOR THE TRIBUNAL OFFICE