



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K C Chan

**Respondent:** Marks and Spencer PLC

**Heard at:** Bristol **On:** 18<sup>th</sup> August 2020

**Before:** Employment Judge P Cadney

**Representation:**

Claimant: Written Submission

Respondent:

## **Reconsideration Judgment**

The judgment of the tribunal is that-

- i) The claimant's application to reconsider the Judgment dismissing his claims of unpaid notice pay holiday pay and overtime pay is refused.

## **Reasons**

1. This case first came before me on 14<sup>th</sup> February 2020 at which point I gave directions for a further preliminary hearing on 17<sup>th</sup> April 2020. One of the matters listed for consideration at that hearing was whether all or any of the claimant's claims should be struck out. At that hearing I gave directions for the final hearing of the claimant's claims of unfair dismissal and race discrimination.
2. The claimant's claims for unpaid notice pay, unpaid holiday pay and unpaid overtime all rest on the unpaid overtime claim. It was not in dispute that the claimant had taken all holiday and been paid notice pay but he contended that he had not been paid for the full amount of overtime he had actually worked. There were, therefore, outstanding amounts owed for unpaid overtime and those sums should have been taken into account in calculating his holiday and notice pay. On pages 2 and 3 I set out the discussion in respect of those claims.

In essence the claimant accepted that he could not identify any specific or even roughly estimated amount of overtime owed for any specific period but contended that the respondent should be directed to disclose all pay records, timesheets and clocking in/out records for a period of nine years in order for him to interrogate them to attempt to discover any underpayment. For the reasons set out I took the view that that approach was wrong and I provisionally formed the view that those claims should be dismissed for the reasons given. However, in order to be fair to the claimant he was given a further 14 days to set out any written objections.

3. On 5<sup>th</sup> May 2020 he sent a further email again requesting disclosure of the payslips, time sheets and clocking in/out records. On 22<sup>nd</sup> May 2020 he was given a further seven days to make any written representations. On 5<sup>th</sup> June 2020 he sent a detailed Schedule of Loss but no written representations in respect of the notice pay, holiday pay, or overtime claims. None had been received by 7<sup>th</sup> July and accordingly a judgment was issued (which was promulgated on 13<sup>th</sup> July 2020) dismissing those claims.
4. On 26<sup>th</sup> July 2020 (within the 14 days to apply for a reconsideration) the claimant emailed asking to “appeal” against the judgment. The EJ has treated that as an application for reconsideration. The application reiterates the request for disclosure but does not address the fundamental point. In the first instance it is for the claimant to set out a claim of sufficient particularity that it can be reasonably responded to and which determines the ambit of any necessary disclosure. In this case it is the other way round. The claimant is requesting an order for disclosure of records spanning years in order to discover if he has a claim. There is at present not even the outline of a claim falling within the jurisdiction of the tribunal. There is nothing in the application which sets out any basis for considering that there is a reasonable prospect of the original decision being varied or revoked and according the application is refused.

Employment Judge P Cadney

Dated: 18 August 2020

Judgment sent to parties 21 August 2020

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS