



EMPLOYMENT TRIBUNALS

Claimant: Miss C Thompson

Respondent: LBS Worldwide Limited

JUDGMENT ON RECONSIDERATION

In exercise of the power conferred by Rule 70 and 72 of the Rules of Procedure set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal refuses the claimant's application for reconsideration made by way of email on 9 December 2020 as having no reasonable prospect of success.

REASONS

1. The claimant's email of 9 December 2020 was referred to the Employment Judge on 28 January 2021. It contains an application for a reconsideration of the Tribunal's decision of 25th November 2020 which was sent to the parties on that same date.
2. The claimant's application is based principally upon a contention that the Skype messages discovered by the respondent post-termination, in which she made various disparaging messages about the respondent's directors and shareholders, would not have been available to the respondent if it had followed a fair and proper investigation. She states that they were personal messages on a third party system and that the respondent accessed them without her permission in breach of her reasonable expectation to privacy, with reference to Article 8 of the Human Rights Act 1998. Similar contentions were made at the hearing, albeit the claimant expands upon the arguments made at the hearing and alleges that the respondent committed a criminal offence in obtaining the Skype messages. She also submits in essence that, if she had been suspended, the respondent would not have been able to access these messages and that, in the absence of them, there would have been no basis to dismiss.
3. The respondent was able to access the Skype messages of the claimant since they were on the respondent's system at the respondent's place of work. Once some of the messages had been discovered the respondent took a decision to dismiss the claimant. The Tribunal's findings on this point are set out at paragraph 57 of the Judgment. It held that, if the respondent had been aware that the claimant had more than two years service and followed a fair procedure, it would have taken all reasonable steps to obtain all the relevant information from those messages before inviting the claimant to a disciplinary hearing. On the balance of probabilities the Tribunal therefore held that the evidence would have been available to the respondent at the time of the dismissal. There is nothing new in the claimant's reconsideration

application that might alter that finding.

4. In respect of the “human rights” contention, the Tribunal did not regard the respondent viewing Skype messages sent by the claimant from the respondent’s premises on the respondent’s equipment, and which were principally sent during the claimant contractual working hours, as being a breach of her “human rights”. Further, whether there is a breach of the claimants’ right to privacy did not necessarily impact upon the statutory question which the tribunal was required to assess. In this case, the Tribunal was satisfied that any alleged breach did not impact upon the fairness of the dismissal. Nor was the claimant in a credible position to rely upon such a contention when she admitted to “*snooping on*” the emails of another director. The Tribunal did not find that the claimant had access to those emails for “*monitoring purposes*” as she now contends in her reconsideration application. This does not fit with the documentary evidence in which she stated, “*I will get sacked for that.*”

5. The Tribunal does not accept that the claimant did not have “*an opportunity to explain*” the content of the Skype messages to the Tribunal, which appears to be a further contention. She had ample opportunity to cover it in her witness statement and in evidence at the hearing itself.

6. In short, there is nothing in the correspondence from the claimant to persuade the Tribunal that there are any reasonable grounds upon which to form a view that it might be in the interests of justice to vary the Judgment.

7. Having considered all circumstances, the Tribunal find that the application for reconsideration has no reasonable prospect of success under Rule 72(1).

8. There must be finality in litigation.

Employment Judge Humble

Date: 9th February 2021

JUDGMENT SENT TO THE PARTIES ON

10 February 2021

FOR THE TRIBUNAL OFFICE

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