EMPLOYMENT TRIBUNALS

Claimant: Ms Angela Dawson

First Respondent: Concept Information Technology Ltd

Second Respondent: Chris Short

Third Respondent: Matt Gillen

Fourth Respondent: Carl Short

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

The respondent's email of 04 January 2021 for reconsideration of the judgment in this case is refused.

REASONS

1. By email presented to the tribunal on 04 January 2021, the respondents applied for reconsideration of the judgment that was handed down in writing to the parties on or around 23 December 2020. This request concerned the following matters:

    a. Seeking clarification as to who the judgment lies against, and requesting that it should lie against the first respondent only.
    b. Reconsideration of the determination relating to unlawful deductions of wages, that it should be varied so as to be dismissed in its entirety, or in the alternative, it should be limited to a maximum of 12 days per absence.
    c. Reconsideration of the determination that informing Ms Turner that she would only receive four days of occupational sick pay was an act of victimisation.

2. For a full history of the litigation, recourse must be had to the tribunal's earlier judgment and reasons.

3. The position with respect reconsideration of judgments are contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.

4. Under Rule 72 of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Where the application is not refused, the application may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted, the judge will give the parties a reasonable opportunity to make further written representations.

5. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA**:

    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 that could lead him to vary or revoke his decision.

6. Furthermore, Simler P, at paragraphs 34 and 35 of Liddington also explained the following:

    "*A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.*

    Where … a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

7. I have considered carefully the matters that have been raised in the email of 04 January 2021. In my view, they amount to re-arguing of the claim. The respondents had every opportunity to give their evidence and make the arguments they wished to make at the original hearing. Applying the important principle of finality of litigation, it is not in the interests of justice her to allow the respondents to re-argue his case. Nor is it proportionate to do so.

8. For the purposes of clarity:

    a. The judgment, in terms of who it lay against in the first three bullet points, was to be read against the pleaded case, the list of issues that was attached to the back of the judgement and in accordance with our

findings. This means that:

i. The victimisation complaints in detriments 21(2), 21(3), and 21(7), 22(3), 22(6), 22(11), 22(14) were found against both the first respondent and the second respondent
ii. The victimisation complaints in detriments 21(18), 21(20) were found against both the first respondent and the third respondent
iii. The victimisation complaints in detriments 21(21), 22(4), 22(5), 22(8), 22(9), 22(10) and 22(15) were found against the first respondent, the second respondent and the third respondent
iv. The unlawful deductions from wages complaint and the constructive dismissal complaint lay against the first respondent, as the claimant's employer.

9. It was clear throughout proceedings that the claims were being brought against individuals where they were involved in the detriment as alleged, in addition to being brought against the first respondent. The respondents had every opportunity to make an application to remove parties from the proceedings either in advance of the hearing or during it pursuant to Rule 34 of the ET Rules of Procedure, but decided not to. This is a matter that if the respondents wished to pursue then they should have done so much earlier than after judgment has been handed down. There is no reasonable prospect of this decision being varied based on this application for reconsideration.

10. In terms of the reconsideration of occupational sick pay as either an unlawful deduction of wages or an act of victimisation, the position is the same. The parties called all the evidence they considered relevant. The parties provided significant written submissions and augmented these with oral submissions. That contained within the application for reconsideration simply re-rehearses submissions already made before the tribunal. These matters have already been fully ventilated by the parties.

11. For the avoidance of any doubt, all the evidence that we heard and read in the case was considered. The judgment does not reference every piece of evidence and the weight attached to it when reaching findings of fact, but the reasons are proportionate to the significance of the issue that was considered. The evidence of Ms Sarah Lewis, although not expressly mentioned in the written judgment, was taken into account when reaching our findings.

12. There is therefore no reasonable prospect of the original decision being varied or revoked.

13. The application for reconsideration is therefore refused.

Signed by: Employment Judge Mark Butler

Signed on: 02 February 2021