



EMPLOYMENT TRIBUNALS

Claimant
Respondent

Mr C Clifton
Automobile Association Developments Limited

JUDGMENT

The claimant's application dated 16 December 2020 for reconsideration of the judgment sent to the parties on 12 November 2020 is refused.

REASONS

1. The claimant had lodged an appeal against his dismissal. He put in his claim to the Tribunal while still dismissed. He was then reinstated, the employer says from the date of dismissal.
2. He had not notified his employer that he was withdrawing his appeal or that he was no longer challenging his dismissal.
3. As set out in the Reasons, there is no evidence that the right of appeal is contractual.
4. The question is what is the position for the claimant if he requests reinstatement by challenging the dismissal and the employer responds with full and retrospective reinstatement. Is the dismissal effective or cancelled? Does the Tribunal have jurisdiction given that the claimant was actually dismissed at the time that he lodged his claim for unfair dismissal?
5. I was referred to a number of authorities, and accepted that they reflected a contractual right of appeal. In the absence of documents, it is not established that here the right of appeal is contractual. However, the authorities all point to reinstatement having the effect of cancelling the dismissal and preserving continuity of employment. In *Howgare v Fane Acoustics Ltd*, EAT, [1981] IRLR 161 it is said that,

*"It is implicit in every contract of employment that where a person appeals against a decision to dismiss him, the intervening period has to be treated as one of suspension and the ultimate decision of the appeal process relates back to the date on which the purported dismissal was effected. In such circumstances, in accordance with the Court of Appeal's decision in *Savage v Sainsbury*, if the man wins he goes back into employment; if he*

loses, he is deemed to have been dismissed on the original date. It is not necessary to have a specific term to this effect in the contract.”

6. In that case, therefore, a successful challenge to the dismissal led to reinstatement and continuity of employment throughout: the dismissal was cancelled and had no effect.
7. At paragraph 6 of the Application for Reconsideration here, it is argued that the claimant does not expressly or implicitly consent to revocation of the dismissal in lodging an appeal. The appeal read,

“I wish to appeal against the decision to terminate my employment on the grounds of ill-health for the following reasons... “

8. That cannot be read other than as express consent to the revocation of the dismissal. Were the right of appeal to be contractual, it would be clear that the reinstatement took effect from the date of dismissal, in line with the authorities. If the right of appeal is not contractual, it must nonetheless be the case that on the respondent agreeing to reinstate and cancel the dismissal, that the contract revives by agreement.
9. In my judgment, the issue here is not whether the appeal was contractual or not. Mr Clifton appealed, asking for reinstatement and was reinstated. In the absence of express words, I cannot see a basis for saying that that had effect only from the date of the respondent’s decision to agree reinstatement, or that it had no effect at all.
10. The reinstatement had the effect that Mr Clifton was no longer dismissed; the dismissal was cancelled, at Mr Clifton’s request. This was not a new contract, but the revival of the earlier contract. The Tribunal had no jurisdiction at and from the date of claim.
11. The application is refused pursuant to Rule 72(1) because there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Street

Date: 15 March 2021

Judgment and Reasons sent to the parties: 31 March 2021

FOR THE TRIBUNAL OFFICE