



EMPLOYMENT TRIBUNALS

Claimant: Mr A Kadema

Respondent: Comfort Call Limited

JUDGMENT

The claimant's application dated 8 December 2020 for reconsideration of the judgment made on 26 May 2020 is refused.

REASONS

1. By an email dated 8 December 2020, the claimant seeks reconsideration of my Judgment in this matter dated 26 May 2020. By that judgment I dismissed the claimant's complaint that the respondent failed to pay holiday pay owing to him at the time it fell due. I issued the judgment under rule 52 of the Employment Tribunal Rules of Procedure.
2. In explaining his reasons for asking for a reconsideration the claimant says this 'There was miss understating, regarding my Holiday Case, there was a talk about Holiday pay interest. I understand it was said, that there is no law about pay interest and finds it pointless to peruse that part of my complaint, but still raised the complaint about 2018 – 2019 Holiday and thought that this was going to go to the final Hearing.'
3. I consider that there is no reasonable prospect of the original decision being varied or revoked, for the following reasons:
 - 3.1. In his claim form, the claimant indicated he was making a claim in respect of holiday pay. He said there was unpaid holiday from 2017 that had now

been paid. He did not refer to any holiday pay being owing from other dates.

3.2. In documents submitted with his claim form he said 'unpaid holiday from 2017 is now settled am claiming 1% interest per week'. There was no reference in that document to being owed holiday pay from 2018 or 2019.

3.3. The claimant's holiday pay claim was discussed at an earlier preliminary hearing in March 2020 before EJ Sweeney. In his record of the hearing EJ Sweeney says 'I note that Mr Kadema has confirmed that the outstanding holiday was paid. However, he is claiming interest of £103.76 on the delayed payment. I explained that the Tribunal had no specific power to award interest as such. This can be discussed at the next preliminary hearing referred to below.' There is no record of the claimant having said he was still owed holiday pay from 2018 or 2019.

3.4. My record of the hearing in May 2020 says this at paragraphs 9 and 10.

'9..At today's hearing, Mr Kadema confirmed the following:...

9.1 He is withdrawing his complaint about the late payment of holiday pay as the Tribunal is unable to award him interest. I said I would issue a judgment dismissing this part of his claim...

10. During this hearing Mr Kadema said he thinks the respondent may still owe him holiday pay. I explained that if that is to be considered by the Tribunal then he will need permission from a judge to amend the Claim Form. Mr Kadema then said he was content not to pursue a complaint about that matter.'

3.5. I have consulted my notes from that hearing. They show that Mr Kadema said he wanted to 'leave' the claim in respect of holiday pay if it was not possible to claim interest in respect of late payments. I asked Mr Kadema if he was withdrawing that part of his claim and he said 'yes'. He then said he had evidence that the respondent had paid him for fewer days holiday than he had taken. I asked if he was saying that he had been underpaid for holidays he had taken and he said 'yes'. I asked Mr Kadema when he had taken holidays for which he had been underpaid and he replied that he had taken holiday on 7 November 2018 but had not been paid for it and that there was another occasion on which he had taken 11 days' holiday but only been paid for 9 days. At that point I explained to Mr Kadema that if he wanted to make a claim in respect of those underpayments he would need to make an application in writing setting out the dates on which he took leave for which he said he had not been paid. Mr Kadema responded 'I'll just leave it.' I told Mr Kadema then that if he wanted to make a claim for those underpayments I could give him until 25 May 2020 to make an application in writing for permission to amend his claim, setting out the dates on which he took holiday, what he thought he should have been paid and what he was in fact paid.' Mr Kadema replied again 'I'll leave it.' I said then that he could have seven days in which to make an application to amend if he was undecided about the matter. Mr Kadema responded again that he wanted to 'leave it'. Mr

Kadema made it clear that he did not wish to apply for permission to amend his claim to complain that he was still owed holiday pay. Had he suggested otherwise, I would have made a direction requiring Mr Kadema to set out his application in writing, as I explained at the hearing.

- 3.6. The only claim in respect of unpaid holiday pay that had been made by the claimant at the time of the hearing in May 2020 was a claim in respect of the alleged late payment of holiday pay in 2017. That complaint was clearly and unequivocally withdrawn by the claimant at the hearing. That decision to withdraw the claim was entirely sensible: the claimant was trying to claim a remedy (interest) that the Tribunal had no power to award. The claimant did not suggest at the time of withdrawing his complaint that he wished to reserve the right to bring a further claim against the respondent raising the same, or substantially the same, complaint (ie a complaint about the alleged underpayment of holiday in 2017). Nor did he say at the time that it would not be in the interest of justice for a judgment to be issued. Therefore, I issued a judgment under rule 52. That rule says that 'where a claim or part of it has been withdrawn..., the Tribunal shall issue a judgment dismissing it... unless a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring [a further claim against the respondent raising the same, or substantially the same, complaint] and the Tribunal is satisfied that there would be a legitimate reason for doing so; or b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.
- 3.7. There is no suggestion now by Mr Kadema that he did not intend to withdraw the complaint in respect of the 2017 holiday pay. Nor does he suggest now that he wishes to revive the claim in respect of the alleged late payment of holiday pay in 2017. In the circumstances, there appears to be no basis for setting aside the judgment dismissing that complaint.
- 3.8. The claimant's request for reconsideration appears to relate to an alleged underpayment of holiday pay dating from 2018 and/or 2019. As I explained to Mr Kadema at the hearing in May 2020, I took the view that the claim he had made to the Tribunal did not include any such complaints and that if he wished to claim he was owed holiday pay from 2018 and/or 2019 he would have to ask for permission from a Judge to add those complaints. He did not make any such application at the May 2020 hearing and, indeed, made it clear he had no intention of making such an application. I do not know whether Mr Kadema made an application after the May hearing for permission to raise a claim about underpayment of holiday pay in 2018 or 2019. The dismissal of the existing complaint in respect of holiday pay dating from 2017 would not, in itself, have prevented the claimant from applying for permission to amend his claim to complain about underpayments of holiday pay in 2018 and/or 2019 and nor would the revocation of that judgment enable the claimant to pursue those complaints.

4. Finally, I note that the claimant's application for reconsideration was made many months outside the 14 day time limit. Given that the claimant's application does not disclose any reasonably arguable ground on which to set aside the judgment dismissing the holiday pay complaint, it is unnecessary for me to decide whether I should exercise my discretion to allow the claimant to make his application outside the usual time limit. I observe, however, that Mr Kadema suggests he thought the complaint about 2018 – 2019 holiday pay 'was going to go to the final Hearing'. For the avoidance of doubt, I do not accept Mr Kadema can have reasonably believed that was the case, given that I made it clear to Mr Kadema that he could not pursue such a claim without permission from a Judge and he said he did not wish to apply for permission.

Employment Judge Aspden

Date 19 March 2021