



# EMPLOYMENT TRIBUNALS

**Claimant:** Michael Leone

**Respondent:** Sharp Transport Ltd

## JUDGMENT FOLLOWING RECONSIDERATION

The Claimant's application dated **6 April 2021** for reconsideration of the judgment sent to the parties on **16 March 2021** is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The Tribunal reached the conclusion that the Claimant had been fairly dismissed. The dismissal resulted from the Second Disciplinary, which followed the First Disciplinary. The First Disciplinary had resulted in a Final Written Warning.
2. The First Disciplinary related to (i) the Claimant's unauthorised absence on 20 April 2019; (ii) braking regulations relating to driving hours by removing a tachograph card whilst driving; and (iii) failing to comply with rules about submitting daily defect sheets.
3. The Second Disciplinary related to the Claimant's refusal to attend meetings including a toolbox talks and continued insubordination whilst subject to a final written warning.
4. The Claimant's application for reconsideration is on the following bases:
  - (1) Tachograph regulations relied upon by the Respondent to say that the Claimant was legally permitted to drive on 20 April 2019 were not in force on 20 April 2019;
  - (2) A challenge to factual findings about a leave request for 20 April 2019;
  - (3) A challenge to factual findings and alleging there was a substitution mindset

regarding removal of the tachograph card whilst driving;

- (4) A challenge to the conclusions drawn about the impact of the Claimant not submitting daily defect sheets; and
- (5) A challenge to the conclusions drawn from the Claimant's non-attendance at the toolbox talk.

### **Tachograph regulations relied upon by the Respondent**

5. The Claimant says that tachograph regulations relied upon by the Respondent to say that the Claimant was legally permitted to drive on 20 April 2019 were not in force on 20 April 2019. As such, the Claimant says that he was permitted not to attend work on 20 April 2019, because attending work on 20 April 2019 would, or might, have been illegal. The Claimant therefore says that the result of the First Disciplinary (a final written warning) cannot stand, and therefore that the result of the Second Disciplinary (dismissal) was unfair.
6. The Claimant states that evidence was served late, during the tribunal hearing, and was relied upon. The Claimant says that this evidence was to the effect that tachograph regulations were as the Respondent stated.
7. The Claimant has unfortunately made a series of errors, each of which is fatal to this element of the reconsideration request.
8. Firstly, evidence of tachograph regulations was not served late. Rather, the Respondent sought to rely on the tachograph regulations. However, they are law, not evidence.
9. Secondly, the tachograph regulations did not form part of the Tribunal's decision in this claim. The unauthorised absence involved a decision not to attend work at all, rather than a decision not to attend work and drive an HGV. There was no evidence that if the Claimant had attended work and it would breach tachograph regulations if he had driven an HGV, then he would nonetheless have been required to drive an HGV. Throughout his claim, the Claimant has made the mistake of assuming that working hours are the same as driving hours.
10. Thirdly, the findings of the First Disciplinary for which the Claimant was issued a final written warning related to three matters, not just the failure to attend work on 20 April 2019.
11. Fourthly, the Claimant effectively invites the Tribunal to adopt a substitution mindset and impute to the Respondent knowledge that it did not have at the time of the dismissal. At the time of his dismissal and appeal the Claimant did not seek to rely on the appropriate regulations as meaning that he could not have driven, based on any calculation to show that he could not have driven.
12. Fifthly, in his further correspondence in support of his application for reconsideration, the Claimant appears to clarify his application. He seems to be saying that he is not making a positive case that driving on 20 April 2019 would have been illegal. Rather, he seems to be saying that the Respondent did not check that it would not have been illegal. Unless he could show that it in fact

would have been legal, then even his argument based on the mistaken premise that he could not work if he could not drive an HGV is not arguable.

**Challenge to factual findings about a leave request for 20 April 2019**

13. The Claimant challenges factual findings in relation to the making of a leave request for 20 April 2019. These issues were aired at the Tribunal hearing and the Tribunal made a judgment.
14. There is no new information contained in the reconsideration request which would allow the Tribunal to reach a different conclusion to the one reached at the Tribunal hearing.

**Challenge to factual findings and alleging there was a substitution mindset regarding removal of the tachograph card whilst driving**

15. The Claimant says that the Tribunal made a finding that the Claimant deliberately removed his tachograph card while driving, whereas the Respondent did not go as far as to reach this conclusion. This makes two errors.
16. Firstly, as referred to in the Judgment, the Respondent appears to have reached the conclusion that this was the most likely explanation for the tachograph machine's readings.
17. Secondly, in the context of this case, whether the Claimant in fact intended to commit misconduct is not relevant to whether the Respondent had a belief based on reasonable grounds following a reasonable investigation that the Claimant had committed misconduct by removing a tachograph card while driving.

**Challenge to the conclusions drawn about the impact of the Claimant not submitting daily defect sheets**

18. The issues raised under this heading do not go beyond those considered at the hearing.
19. There is no new information contained in the reconsideration request which would allow the Tribunal to reach a different conclusion to the one reached at the Tribunal hearing.

**A challenge to the conclusions drawn from the Claimant's non-attendance at the toolbox talk**

20. The issues raised under this heading do not go beyond those considered at the hearing.
21. There is no new information contained in the reconsideration request which would allow the Tribunal to reach a different conclusion to the one reached at the Tribunal hearing.

**Conclusion**

22. None of the matters raised by the Claimant in his application for reconsideration

have a reasonable prospect of success.

23. I take this opportunity to note that the tone of the emails sent by each side in relation to the reconsideration request has not assisted the Tribunal in its resolution of this matter. In particular, references to costs in the context of the Claimant exercising his right to apply for reconsideration are not necessary. This manner of conducting litigation does assist the Tribunal to further the overriding objective of dealing with cases fairly and justly.

**Employment Judge S Knight  
Date 19 April 2021**