



EMPLOYMENT TRIBUNALS

Claimant: Mr S Sun
Respondent: Miki Travel Limited

JUDGMENT

The claimant's application dated 30 March 2021, received by EJ Isaacson on 16 April 2021, for reconsideration of the judgment on application for reconsideration dated 19 March 2021 is refused.

REASONS

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

Point 1

1. The claimant told the Tribunal, at the final hearing, that he withdrew his previous race discrimination claim due to a threat from HR. The email exchange with ACAS dated 4 March 2019 confirms that the respondent had made a without prejudice offer to the claimant to settle his Tribunal claim, which was conditional on the claimant exiting the respondent business. It is often the case that an employer will enter into without prejudice negotiations with an employee, who has presented a claim form, including an offer that is conditional on the employment relationship ending.
2. The email exchange with ACAS also confirms that at the time the claimant felt he had been forced to attend a meeting with the company and felt intimidated and threatened with dismissal. In paragraphs 14 and 15 of the Reserved Judgment the Tribunal acknowledged that the claimant felt threatened at the time. However, the Tribunal concluded, based on all the evidence before it, that the claimant was not told to withdraw his Tribunal claim by the respondent. The email from ACAS does not change the Tribunal's view. There is a difference between offering terms of settlement on a without prejudice basis and telling an employee to withdraw their claim or they will be dismissed. Having seen the email from ACAS the Tribunal still

finds that the respondent did not tell the claimant to withdraw his claim, or he would be dismissed.

Point 2

3. The claimant's English was very good, and the Tribunal was satisfied that he was able to understand all the questions put to him and follow all the submissions. If the claimant notified the Tribunal that he had not understood a question it was repeated in a way that he could understand. The claimant never informed the Tribunal that he did not understand the respondent's submissions. The claimant had a full opportunity to give his own submissions.

Point 3

4. The claimant had every opportunity to put his questions to all the witnesses and did do so.

Point 4

5. Both the claimant and the respondent's bundles were before the Tribunal. There was no one valid bundle. The Tribunal was satisfied that all the documents the claimant wanted the Tribunal to see were before the Tribunal. The claimant confirms he sent his copy of the bundle to the Tribunal.

Point 5

6. The Tribunal accepted the respondent witnesses' evidence that they found the emails from the claimant to be rude and inappropriate and found this was a reasonable conclusion to reach based on the email exchanges. The fact that the claimant cannot see that these emails are rude does not make the emails not rude.

Point 6

7. The Tribunal did not ignore the fact that the respondent did not provide one million examples. This point was addressed in the Reserved Judgment in paragraph 118. The respondent could not have provided the claimant or the Tribunal with a million examples as Ms M had merely used a term of expression.

Point 7

8. There was no evidence before the Tribunal to demonstrate that the respondent in any way fabricated emails. The fact that the claimant did not have access to his original emails did not prejudice his ability to have a fair hearing. Most of the emails before the Tribunal were in the claimant's bundle and were the original copies he had received from the respondent. It was reasonable of Mr Y to produce charts based on the data he had collected.

Point 8

9. The fact that the claimant was busy and distracted was not a sufficient reason for missing the appeal deadline. In all the circumstances the Tribunal found it reasonable that the respondent would not agree to hear his appeal out of time.

Point 9

10. There was no evidence before the Tribunal to demonstrate that the respondent in any way fabricated emails. The fact that the claimant did not have access to his original emails did not prejudice his ability to have a fair hearing. Most of the emails before the Tribunal were in the claimant's bundle and were the original copies he had received from the respondent. It is normal and reasonable for security reasons that an ex- employee is not allowed access to their original email account.

Point 10

11. The Tribunal did take account of the evidence of Mr M that the claimant could not process invoices created during his holiday time. The Tribunal accepted the evidence of the respondent witnesses that they concluded that the claimant had not performed all the tasks they felt he was meant to complete before going on holiday. The Tribunal does not put itself in the shoes of the employer and decide what they would have done in the circumstances. The Tribunal considers whether the respondent acted reasonably in all the circumstances.

Point 11

12. The claimant did have an opportunity to amend the minutes before the respondent made its decision. Mr M may not have seen the claimant's version of the minutes before he made the final decision. Mr M confirmed that if he had it would not have made any difference to his decision.

Point 12

13. It was reasonable of the respondent to deal with Mr L informally but to deal with the claimant's formally. Mr L apologised and matter appeared to be resolved. The Tribunal found the respondent's decision to deal with the claimant formally to be reasonable in the circumstances.

Point 13

14. There was no evidence of an orchestrated plan against the claimant but evidence the respondent acted reasonably going through all the internal processes fairly. There was no evidence that the respondent deliberately raised the 2nd disciplinary investigation after the 1st warning appeal deadline.

Point 14

15. Any email from the claimant asking the staff to meet for a quick chat would have made no difference to the finding that the staff felt intimidated by the claimant. The fact that the claimant felt bullied and intimidated does not mean that he could not have bullied or intimidated others.

Point 15

16. As set out in paragraph 113 of the Reserved Judgment, the respondent was notified by the claimant that he suffered from anxiety and depression. His anxiety and depression were considered by the respondent before deciding to dismiss.

Point 16

17. The Tribunal did not find the sending of letters to the wrong address a serious breach of GDPR. There was no evidence of dishonesty or bad attitude by the respondent.

Employment Judge Isaacson

19 April 2021

Date _____

JUDGMENT SENT TO THE PARTIES ON

19/04/2021.

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FOR THE TRIBUNAL OFFICE