RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr S Digpal**

Respondent: **Wilson James Limited**

JUDGMENT FOLLOWING RECONSIDERATION

The Claimant's application dated **8 March 2021** for reconsideration of the judgment sent to the parties on **24 February 2021** is allowed.

After reconsideration the original decision is confirmed.

REASONS

1. Under Rule 70 of the Tribunal Rules 2013 a Tribunal may reconsider a judgment where it is necessary in the interests of justice to do so. This discretion must be exercised judicially having regard to the interests of all parties and the principle that there should, so far as possible, be finality of litigation.

2. Under Rule 70, on reconsideration, the original decision may be confirmed, varied or revoked.

Application to Reconsider

3. It was a close decision in this case whether to reconsider the original decision. The parties both made persuasive submissions. At the original hearing, the Claimant had been badly let down by his solicitor and argued that he had been therefore less able to make all the relevant arguments. He argued that after the case the solicitor had let him down again by instructing counsel only on the 'working under protest' point and not the interpretation of the contract point. The Respondent argued that I had avoided any injustice by asking questions of its witness in order that the Claimant's case was put; and by allowing the Claimant an opportunity after the hearing to make written submissions, which he took. It argued these were not limited to the protest point. The Respondent contended this was a classic case of the Claimant wishing to have a second bite at the cherry now that he had seen my decision.

4. I have a great deal of sympathy with the Respondent's arguments: the Claimant is a law student and presented his case intelligently and his written submissions were detailed and of a professional standard. His application in that sense is like another bite at the cherry. I have considered the principle of the finality of justice. Nevertheless, the combination of the Claimant's solicitor's mistake (not misconduct) and the strict rule against postponement, did put the Claimant in a disadvantageous position. I am satisfied I made up for that on the facts by levelling the playing field by asking relevant questions of the Respondent's witness, but I am persuaded by the Claimant that the extra week he had to make closing submissions was muddied by his solicitor's insistence on obtaining advice on only part of his case. It seems to me therefore that the interests of justice require that I reconsider my original decision.

Hearing

5. I then considered whether there should be a hearing. Here I agree with the Respondent that the matter can be dealt with on the papers. This is because my findings of fact as to the agreement reached are not disputed. The dispute is over the interpretation of the terms of that agreement.

Reconsideration

6. I have read carefully the Claimant's application, but I remain of the view that the interpretation of the contract is that the site he was assigned to was the Support Team and the rate for that site was £10.50 per hour (subsequently increased to £10.55) and this did not vary while he remained assigned to the Support Team.

7. I have reviewed the factors I set out in favour of one interpretation and the other in the light of the further submissions made by both parties.

8. I do not agree that it is wrong in law to consider the phrase 'assigned to the F100 London Support Team' at clause 3.4 assists in the interpretation of where the Claimant was assigned and in the interpretation of the word 'site assignment'. The words share a common root. There is no principle of law that would prevent such an interpretation.

9. The Claimant's submission that the rest of the words in clause 3.4 carried more weight is one I have carefully considered. The difficulty with adding interpretive weight to those words for a member of the Support Team is that they do not have one geographical location and on the signing of the contract may have none. Thus for the zero hour worker the interpretation that makes better sense is that the site assignment is the Support Team.

10. The Claimant raises a question at paragraph 50 of his submissions. The purpose of clause on my interpretation was to ensure that if he is moved from the Support Team his pay did not go down, which it might well have done had he been assigned to a geographical location that commanded a rate for example of £9 per hour which was possible.

11. It was the Claimant who had the chance of making his amendments cover his current arguments and they do not expressly do so. His amendment states: 'if I move to a new assignment' not a new 'site'. His amendment does not make it clear at all that he is contending there should be a different rate

for each geographical site, rather it reads as if he is stating that if he is moved to a different assignment, i.e. away from the Bench Team then he will not accept a lower hourly rate.

12. The difficulty with the Claimant's interpretation is that the whole point of the Support Team is that they move between geographical sites. The difficulty for him is that the rate of pay is stated clearly as £10.55. This would not have made any sense if it was to vary between sites and the Claimant's amendments did not achieve this.

13. I therefore confirm the original decision.

Employment Judge Moor

10 May 2021