



EMPLOYMENT TRIBUNALS

Claimant: Andrew Ward

Respondents: (1) Arthur Branwell & Co. Ltd.
(2) Nigel Day

Heard at: East London Hearing Centre **On:** 03 June 2021

Before: Employment Judge Housego

Representation

Claimant: None

Respondent: Written application

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Respondents' application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. Subsequent to a hearing on 06-08 and 23 April 2021 I promulgated a judgment which found that the Claimant was fairly dismissed but suffered an unlawful deduction from his wages and was not paid notice pay due to him. Compensation for both was awarded gross.
2. By email of 18 May 2021 the Respondents assert that the calculation should have been made on the net earnings of the Claimant not the gross figure. The Respondents do not challenge the decision itself, or the period of calculation of the gross amount, of the amount of the gross wages, or the arithmetic.

3. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint

another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

4. The application was made promptly. The Claimant has not made any observations on it.
5. The award relates to notice pay and to deduction from wages, and is not a compensatory award for unfair dismissal. The judgment was that the dismissal was fair. Therefore the way that compensatory awards are usually calculated is not relevant to the judgment in this case.
6. The Tribunal applied Walters (t/a Rosewood) v Barik (Unlawful Deduction from Wages) [2017] UKEAT 0053_16_1302 (13 February 2017). This states that awards under S13 may be awarded gross. The Respondent may either pay gross (and the Claimant must then discharge any liability to tax and national insurance), or the Respondents may meet that liability itself (and employer's national insurance liability) and pay the net amount to the Claimant. The Respondents must do one or the other.
7. The Tribunal took the same approach to the notice pay claim. In any event the Tribunal may award compensation in any way that it decides is just and equitable: Toni & Guys (St Paul's) Ltd v Georgiou (Unfair Dismissal: Compensation) [2013] UKEAT 0085_13_1907 (19 July 2013), and the Tribunal considered that the same will apply to the notice pay claim.
8. Accordingly, I consider that there is no reasonable prospect of the original decision being varied, and so refuse the application for a reconsideration.

**Employment Judge Housego
Dated 03 June 2021**