



EMPLOYMENT TRIBUNALS

Claimant: Mr M Nesut

Respondent: (1) Best Kebab
(2) Mr Agi Sadic

HELD AT: Manchester (by CVP) **ON:** 16 April 2021

BEFORE: Employment Judge B Hodgson (sitting alone)

REPRESENTATION:

Claimant: Mr G Dicu, friend

Respondent: No appearance entered and no attendance

JUDGMENT ON RECONSIDERATION

Upon consideration of the claimant's application dated 29 April 2021 for reconsideration of the Judgment promulgated on 23 April 2021, the application is refused.

REASONS

1. The claimant, through his lay representative Mr Dicu, has sent an email to the Tribunal dated 29 April 2021. The email states firstly that Mr Dicu "would like to clarify the name of the claimant as Mr Mesut Nemet, on the paperwork we have received from yourselves it says Mr N Memet which is incorrect." Secondly, the email states that "we would like to request a reconsideration on the judgement that the judge dismissed". This is accepted as an application for reconsideration under the provisions of Rule 71
2. As to the first point, it is not clear to which "paperwork" the claimant's representative is referring. The Judgment identifies the claimant in the heading as

"Mr M Nesut". This is consistent with the ET1 Claim Form (which indicates, at Box 11, Mr Dicu as the claimant's representative) which states (at Box 1) that the First Name of the claimant is "Memet" and the Surname or family name "Nesut". The ACAS Early Conciliation Certificate (the number of which is correctly referred to in the Claim Form at Box 2.3) states the prospective claimant to be "Memet Nesut"

3. In the circumstances, and based upon current information, the Tribunal proposes to take no further action in respect of the naming of the claimant in the Judgment
4. The grounds for the application for reconsideration are summarised as being that "we don't feel the whole story about Mr Nemet and his situation was taken into account and the judge had made some comments we feel are wrong and would like to clarify". The application then sets out in more detail the matters being relied which can be summarised as follows:
 - 4.1. The claimant is Romanian/Turkish with poor English and, never having completed his education, learning disabilities. He came to England to make a better life for himself;
 - 4.2. After living homeless for a while, he was employed by the respondent who also gave him accommodation;
 - 4.3. After commencing work with the respondent, the claimant asked the respondent on numerous occasions about sorting out his NI number and paperwork so he was OK to work. He was told this was being dealt with and, being vulnerable, believed this;
 - 4.4. The claimant was working 12/13 hour days 7 days a week and was hardly ever paid;
 - 4.5. In July, Mr Dicu befriended the claimant and asked the respondent about the claimant's NI and Tax status but was not given any information;
 - 4.6. The claimant did not have a three month break from his employment - while the kebab shop at which he worked was closed due to Covid 19, as a key holder, he checked the premises each day and helped trades people doing building work on the roof and to clean and decorate;
 - 4.7. Rather than bringing the case to court after dismissal, the claimant was dismissed after the claimant approached ACAS in October and ACAS contacted the respondent, as a result of which he was made to leave his accommodation making him homeless
5. Having fully considered the application, the Tribunal's conclusions with regard to these matters raised are as follows:
 - 5.1. The claimant, with Mr Dicu representing, had full opportunity to put his case as he saw fit at the final hearing. His evidence as to the calculation of the amount he was claiming was very vague;

- 5.2. The evidence given by the claimant was that he did not work during the months of April and May 2020 thereby breaking his period of employment and limiting any claim for unauthorised deduction of wages to the period June – October 2020;
 - 5.3. The evidence given by the claimant as to the wages he was in fact paid cash in hand and the timing of his dismissal contradicts the statements made in these respects in the application;
 - 5.4. The payment of cash in hand by the respondent pertained throughout the employment of the claimant whose evidence was that he was aware that the respondent was not paying tax on a regular basis in respect of a number of his employees
6. In all the circumstances, the Tribunal concludes there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge B Hodgson
Date: 15 June 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
9 July 2021

FOR THE TRIBUNAL OFFICE