



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Sareet Sidhu

**v Dr Sangeeta Rathor t/a Allenby
Clinic/Northolt Family Practice**

Heard at: Watford in person and by CVP

On: 10 May 2021

Before: Employment Judge Alliott

Members: Mrs S Boot
Mrs I Sood

Appearances

For the Claimant: Mr Hugh Jory QC (counsel)

For the Respondent: Did not attend

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR RECONSIDERATION

1. The judgment and reasons dated 16 September 2019, sent to the parties on 18 September 2019, are revoked.
2. The claimant was unfairly dismissed.
3. The respondent has made unauthorised deductions of wages.
4. The action is stayed until 10 November 2021. If no application is made to lift the stay and list a remedy hearing by that date, then the order will be that no basic or compensatory or breach of contract or notice pay or unauthorised deduction of wages awards are made.

REASONS

Introduction

1. By a claim form presented on 13 December 2017 the claimant brought claims of automatically unfair dismissal for making a protected disclosure, unfair dismissal, unauthorised deduction of wages and a claim for notice pay (breach of contract).

2. The case was heard on 17-20 December 2018 and 25-26 April 2019. Judgment and reasons was signed on 16 September 2019 and sent to the parties on 18 September 2019.
3. On 25 October 2019 the claimant filed a Notice of Appeal to the Employment Appeal Tribunal.
4. On 2 September 2020 the claimant filed Supplemental Grounds of Appeal. The Supplemental Grounds of Appeal relied upon a judgment of Mr Tom Leech QC (sitting as a Judge of the High Court) issued on 17 July 2020.
5. On 13 October 2020 his Honour Judge Barklem directed that the appeal be stayed for a period of 40 days in order to give the claimant an opportunity to submit an application for reconsideration to this tribunal. The reasons given by the judge were as follows:-

“In a judgment dated 24 July 2020 of Mr Tom Leech QC, sitting as a Deputy Judge of the High Court, Chancery Division, [2020] EWHC 1916 (CH), it was held (inter alia) that the question of issue estoppel did not arise in relation to the findings of the Employment Tribunal (“ET”), which are the subject of this appeal.

The Court held, in effect, that the respondent had lied to the ET, and had failed to give disclosure in the ET proceedings, and that, had proper disclosure been given, the ET would have been unlikely to have reached the conclusions that it did. The judgment is lengthy, but the ET is referred, in particular, to paragraphs 377 to 386. Para 382 raises a Ladd v Marshall point, and para 384 raises the issue of the failure to give disclosure.

In the circumstances it seems to me that the ET should be given the opportunity of reconsidering its decision, and the appeal is stayed in order that the claimant may seek such reconsideration.”

6. On 3 November 2020 the claimant made an application for reconsideration.
7. On 18 November 2020 Employment Judge Allott extended the time for the presentation of an application for reconsideration and the respondent was asked for representations and reasons on the issue of reconsideration. The respondent did not put in any reasons why the judgment should not be reconsidered.
8. On 30 December 2020 Employment Judge Allott directed that the application for reconsideration should be heard at a hearing.
9. Notice of the reconsideration hearing was sent to the parties on 17 March 2021 and on 24 March 2021 the respondent emailed the Employment Tribunal as follows:-

“Thanks for your information.

Unfortunately I have no representation, neither I have money as I am a bankrupt nor I have the two business anymore with NHS. I also going through depression and unable to deal with such situations. I am working part-time as an employee.

I am still a Doctor/GP and working through this pandemic. I am copying this to my trustee.

Kind regards

Dr Sangeeta Rathor.”

The respondent’s absence

10. The respondent clearly received notice of this hearing date. I was informed that the respondent had been emailed twice and sent a copy of the claimant’s skeleton argument and core bundle on 5 May 2021.
11. The respondent was not in attendance today. The telephone number on the file was an obsolete one but the claimant’s representatives were able to provide an up to date mobile number for the respondent. The clerk telephoned the respondent twice but got no response. The clerk also emailed the respondent twice asking if she was able to attend today. The respondent replied at 11.37 stating as follows:-

“Thanks.

Unfortunately not as I had already previously informed the court that I am a bankrupt now, have no business and no money to fight the case.

I am suffering with depression which can be checked with my GP and I am not able to deal with such situations anymore.

I do apologise for late response. If court needs letter from GP, I can provide at request.

Kind regards

Dr S Rathor”

12. We are satisfied that the respondent does not wish to appear at this hearing. Accordingly, we decided to proceed in her absence.

Reconsideration of judgment

13. Reconsiderations of judgments is dealt with in Rule 70 of the Employment Tribunal’s (Constitution and Rules of Procedure) Regulations 2013. Rule 70 provides:-

“70 Principles

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.”

14. The judgment in this case was a declaration that the claimant was unfairly dismissed and had been subjected to unauthorised deduction of wages in the sum of £2,668.34.

15. The findings in the reasons make clear that the claim for automatically unfair dismissal for making a protected disclosure failed, that the dismissal was procedurally unfair but, based on a finding that the claimant had awarded herself unauthorised pay rises, that had a fair procedure been adopted then she would have been dismissed for gross misconduct in any event. Further, a finding was made that it would be just and equitable to reduce the basic award and compensatory award to nil for the contributory conduct of the claimant in awarding herself pay rises without authorisation.
16. The application for reconsideration makes plain that the claimant is seeking reconsideration of the tribunal's determination that she awarded herself unauthorised pay rises, which is a finding in the reasons. Nevertheless, in our judgment, this is an application for reconsideration of the judgment as, if the claimant was unfairly dismissed with no "Polkey" finding or contributory fault finding, then the judgment would stand to include a basic award, a compensatory award and a finding of breach of contract for notice pay. That the claimant is not, at this stage, seeking such awards due to the respondent's bankruptcy, does not, in our judgment, mean that this is not a valid application for reconsideration of the judgment.
17. The claimant does not seek reconsideration of the rejection of her automatically unfair dismissal claims. In his skeleton argument Mr Jory invites us to revoke paragraphs 74-82 of the reasons which relate to protected disclosures. In the circumstances we do not revoke those findings.

The judgment of Mr Tom Leech QC (sitting as a Judge of the High Court)

18. At paragraph 381 of his judgment the following is recorded:-

“For these reasons I find that Dr Rathor authorised Sareet's pay increases and dismissed that element of her counter claim against Jaswant (who is alleged to have been responsible paying staff wages, liaising with payroll providers and for production of payslips”

19. The learned Judge ruled that he was not bound by issue estoppel. Firstly, because the same relief was claimed against Jaswant in relation to both the bonus and the two pay rises. Secondly, on the basis that he was making his findings on new material which the claimant could not with reasonable diligence have adduced before the Employment Tribunal.
20. Normally, issues relating to the admissibility of new evidence fall to be considered by the Appellate Court. However, in this instance, the Employment Appeal Tribunal has invited this Tribunal to reconsider its decision in the light of the judgment of Mr Tom Leech QC. Accordingly, that is what we have done. Obviously enough, the original decision of this Tribunal was made prior to the judgment of Mr Tom Leech QC. It is only by virtue of the power to reconsider an Employment Tribunal decision that this matter comes back to us after the judgment of Mr Tom Leech QC. Mr Jory contends that, if we revoke the judgment, then, as we are taking the decision again after the judgment of Mr Tom Leech QC, so, it is submitted, we are bound by the doctrine of issue estoppel. No authority has been

produced to us on the point. Nevertheless, we accept that, if we revoke the judgment, we are bound by issue estoppel to give effect to the finding that the respondent authorised the claimant's pay increases and bonus.

21. As summarised by HH Judge Barkem, a court has held that the respondent had lied to us and failed to give proper disclosure to us and that, had we been told the truth and been provided with the 2016 and 2017 accounts, then we would have been unlikely to reach our conclusion that the claimant awarded herself pay rises without authorisation.
22. Accordingly, we have concluded that it is necessary in the interests of justice to reconsider our judgment.
23. We have decided to revoke the judgment. Having revoked the judgment, we take the decision again.
24. We find that the respondent authorised all the claimant's pay increases and bonus.
25. In the circumstances, the respondent cannot have genuinely believed that the claimant had awarded herself pay rises without authorisation and cannot have genuinely believed that she had committed acts of gross misconduct. Consequently, we find that the claimant was unfairly dismissed both substantively and procedurally. We do not find that had a fair procedure been adopted the claimant would probably have been dismissed in any event. Further, we do not find that the claimant's conduct contributed to her dismissal.
26. For the avoidance of doubt, paragraphs 50, 52, 53, 71, 72, 92, 93, 96, 97 and 98 are revoked and substituted with our findings in paragraphs 24 and 25 above.
27. The unauthorised deduction of wages claim needs to be recalculated, if necessary, at the remedy hearing as the claimant's salary level was higher at the material time.

Employment Judge Alliot

Date: ...6.8.2021.....

Sent to the parties on: ...09.08.2021...

THY

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For the Tribunal Office