Case number: 2201937/2019

EMPLOYMENT TRIBUNALS

BETWEEN:

Mr M Kopinski		DSG Retail Limited
Claimant	and	**Respondent**

Application for Reconsideration

Held at: In Chambers On: 8 August 2021

Before: **Employment Judge R Clark**

JUDGMENT

1. The Claimant's application for reconsideration of the judgment dated 19 May 2021 is refused.

REASONS

1. Following a hearing over four days, I dismissed a claim of unlawful deduction from wages but upheld the claim of unfair dismissal on a narrow aspect of the procedure adopted. But for that, however, I concluded the dismissal would have been fair and in assessing appropriate just and equitable factors, I concluded that a fair dismissal could have occurred by mid-January. The effect of that would have been to extend pay, that is SSP for about 5 or 6 weeks. However, I also concluded that the claimant was guilty of the misconduct alleged, that this was culpable behaviour causing the dismissal and that in the particular circumstances of this case it was just and equitable to reduce both basic and contributory awards by 100%.

2. The judgment was sent to the parties on 19 May 2021.

3. By email dated 2 June 2021, the claimant applied for a reconsideration of that judgment. The application accepts the liability outcome and findings. He seeks reconsideration of the 100% reduction based largely on the basis that the judgment means the employer has not been punished. He acknowledges he did not present his case as well as he would have wished and sets out various points of evidence and facts he wishes me to have regard to. He explicitly states he does not question any of the conclusions I reached, challenging the fairness of the investigation and disputing facts based on what Mr Kopinski says the employer should have done. He repeats allegations of conspiracy amongst the managers to find a reason to dismiss.

4. Such an application falls to be considered under rules 70-72 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's email application was submitted in time although I regret to say his application has not been actioned until he sent a further email dated 5 August 2021 chasing the application. I apologise to Mr Kopinski for that delay.

5. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. There is now a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.

6. By rule 72(1) I am to give initial consideration to the prospects of the application which determines whether it is necessary to seek the views of the respondent and whether the matter can be dealt with on paper or at a further hearing before the same tribunal. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I shall refuse the application without being required to consider the matter further.

7. I am satisfied that there are no reasonable prospects of the original decision being varied or revoked. First, some of the matters now put before me were argued and given consideration in reaching the conclusions I did. Secondly, for the new matters to now be cause for the case to be re-argued, there would have to be something about the manner in which the first hearing was conducted which, if allowed to stand, would offend the interest of justice. Otherwise, this challenge is essentially a second bite at the cherry. I acknowledge there were deficiencies in how Mr Kopinski prepared for the case which may have affected the way his evidence was presented but two factors lead me to conclude they fall short of requiring the matters to be opened up for a second time. The first is that both parties were given the same case management directions and were on notice of the things that would

have to happen in advance of the hearing. There is information freely available on-line on the process and conduct of a final hearing in the employment tribunal. Secondly, upon recognising the deficiencies at the time, I took steps to re-balance any disadvantage Mr Kopinski might face. I explained the process and I ordered a change in the order of witnesses so that Mr Kopinski could see the process of putting questions in cross examination before he was required to do it. That clearly worked. I also indicated I would take a relatively relaxed stance on the basis of Mr Kopinski's case which was clear from the totality of his claim, even if his witness statement was less full. Coincidently, the fact the hearing went part heard then had the effect of providing a number of intervening weeks during which his challenges and questions could be perfected. I recall that, in the end, Mr Kopinski did in fact do a good job at testing the respondent's witnesses. Nothing in that, however, shows any aspects of unfairness which might require me to contemplate reopening the case.

8. Where the case has been conducted in a proper manner, the outcome is final.

9. Finally, the purpose of these proceedings is not to punish the employer. To the extent that it is said my judgment means they "get away without consequences", there is a public record of a finding of unfair dismissal which is itself a consequence to the employer and of benefit to the claimant. The absence of any financial consequence arises from my conclusions that the underlying misconduct was wholly made out.

10. Consequently, I refuse the application for reconsideration.

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Employment Judge R Clark
Date: 8 August 2021

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS