EMPLOYMENT TRIBUNALS

Claimant: Mr K McDonald

Respondent: Halliwell Jones Ltd

RECONSIDERATION JUDGMENT

Upon the claimant's application for reconsideration of the Tribunal's reserved judgment with reasons sent to the parties on 23 July 2021, the application is refused. The original judgment is confirmed.

REASONS

1. Following a final hearing of the claimant's claim on 15-16 July 2021, the Tribunal's reserved judgment and reasons were sent to the parties on 23 July 2021.

2. The Tribunal's judgment was that the claimant resigned his employment in circumstances not amounting to a constructive dismissal for the purposes of section 95(1)(c) of the Employment Rights Act 1996. He was not dismissed by the respondent. His complaint of unfair dismissal was not well-founded. The claim was dismissed.

3. By email dated 6 August 2021 the claimant applied for reconsideration of the judgment. His grounds were that (1) evidence from cross-examination had not been included in the judgment or taken into account and (2) the decision in *Morrow v Safeway Stores plc* was relevant.

4. The evidence from cross-examination that the claimant relies upon in his reconsideration application is as follows. (a) Mr Ogden admitted to using the phrase "if you can't do the job after 2 years just say and I'll find someone who can". (b) While Miss Stevens was a capable employee, she was in a lower position to that of workshop controller and this undermined the claimant's position as a supervisor. (c) Miss Stevens had been employed by the respondent for less than 12 months and was in a position that the claimant had been promoted from. (d) Mr Ogden was painted as if raising his voice and/or

shouting was not being in his character. (e) Mr Foster's evidence under cross-examination was that he had witnessed Mr Ogden publicly reprimand and raise his voice at other employees on "a few occasions". (f) In the claimant's contention, this showed that in fact the incident on 20 October was more likely to have occurred and this is not reflected in the judgment. (g) Mr Foster was certain that during the incident on 20 October that Mr Kerevan, who gave evidence that he could hear raised voices from where he was at the time of the incident, but could not be sure of the exact events due to the length of time that had passed, was stood in the workshop at the time of the incident, and he knew this because he could see him through the window, and Mr Kerevan's workstation was directly outside the office. (h) The judgment stated that Mr Ogden may have raised his voice above normal speaking level, but to shout was not in his character, whereas the evidence from Mr Horton showed that his voice was loud enough to be heard 20 metres away and around 3 corners. (i) In his text message he also clearly states that he "heard the shouting", thus casting doubt on whether the respondent's version of events is to be believed and is evidence that in fact Mr Ogden was shouting. (j) Mr McAlpine and Mr Foster also confirmed in cross-examination that the claimant did not shout and this demonstrates that in fact the events occurred as described in the claimant's witness statement.

5. It is well established in the procedural case law that the Tribunal is not obliged to set out or rehearse each and every item of evidence that it has seen or heard, whether in chief, through cross-examination, as a result of its own questions or via the documentary evidence. The Tribunal's task is to keep the totality of the evidence firmly in mind, while assessing that evidence and setting out its primary findings of fact from the evidence.

6. The claimant may be reassured that the Tribunal had the totality of the evidence firmly in mind in making its findings of fact and reaching its decision. The matters set out by the claimant at (a) to (j) above were within the Tribunal's consideration. However, no single piece of evidence is conclusive, determinative or decisive. There is nothing in the claimant's application that causes the Tribunal to reconsider its assessment of the evidence or its findings of fact.

7. The decision in *Morrow v Safeway Stores plc* was not cited to the Tribunal by either party. It is a decision of the Employment Appeal Tribunal reported at [2002] IRLR 9. The respondent has commented upon its relevance in its email in response to the claimant's application.

8. *Morrow* is a case in which the employment tribunal had misdirected itself. It found that the employer had breached the implied term of mutual trust and confidence, but in a way that was not so serious as to amount to a repudiatory breach or to entitle the employee to resign. That was an inconsistent or contradictory finding. The EAT remitted the matter to a fresh tribunal for re-hearing.

9. Each case depends upon its individual facts. The case of *Morrow* provides no useful precedent for how the present Tribunal approached the facts of the this claimant's case. Any comparisons between the two cases are at best

superficial. This Tribunal found that there had been no breach of the implied term of mutual trust and confidence on the findings of fact that it made. There is nothing in *Morrow* that would cause this Tribunal to revisit its decision or its reasoning.

10. In conclusion, the claimant's application for reconsideration made under rules 70 and 71 is not well-founded. It is refused. Acting in accordance with rule 72, the Tribunal considers that the interests of justice do not require that the judgment or its reasons be varied or revoked. There is no reasonable prospect of such variation or revocation. The judgment and its reasons are confirmed.

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Judge Brian Doyle
Date: 24 August 2021

RECONSIDERATION JUDGMENT & REASONS
SENT TO THE PARTIES ON

2 September 2021

FOR THE TRIBUNAL OFFICE