



EMPLOYMENT TRIBUNALS

Claimant: Mr N Ithia

Respondent: Key Electrical Solutions Limited

JUDGMENT ON A RECONSIDERATION

The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Background

1. This case was heard on 11, 12, 13 January 2021. The Tribunal made a reserve decision on 23 April 2021 and decided as follows:

"The unanimous decision of the Employment Tribunal is that:

1.The Claimant's claims of direct race discrimination, automatically unfair dismissal, wrongful dismissal and breach of contract in respect of course fees are not well-founded and are dismissed.

2.The Claimant's claim of non-payment of wages for the months of September and October 2019 and outstanding holiday pay is well-founded and succeeds. A hearing will be listed to determine remedy.

3.The Respondent's counterclaim is not well-founded and is dismissed."

2. In respect of the Respondent's evidence we observed the following:

"On the other hand, Ms Harker's evidence was entirely truthful. She was

what we can only describe as unflappable under cross-examination and gave credible responses to all matters put to her. Accordingly, where there was a conflict in the evidence, we preferred that of Ms Harker.”

3. The Respondent’s counterclaim included a claim for parking fines incurred whilst its van was in the Claimant’s possession after his dismissal in the amount of £730. Ms Harker gave evidence that:

“While in the Claimant’s possession, the van incurred parking fines that had to be paid by the Respondent amounting to £730 [144-151].”

The reconsideration application

4. The Claimant presented his application for a reconsideration on 28 July 2021 submitting that:

“In the interest of justice I would like for the tribunal to reconsider its decision, this is because new information has come to light which clearly shows Ms Rebecca Harker intentionally lied in her witness statement and under oath at and to everyone at the tribunal. Therefore it is her evidence which is not credible and her entire defence should be struck out as a result of her unreasonable conduct. The tribunals decision to believe Ms Harker who has intentionally misled the tribunal instead of Mr Ithia has caused an injustice and hardship upon Mr Ithia on a matter which is of great public interest at present.

The credibility of Ms Harker is important in the interest of justice as this is used by the tribunal to address the balance of probability and determine the case. Therefore I believe the above shows that we cannot rely on the credibility of Ms Harker, whereby the first judgement (direct race discrimination, automatically unfair dismissal, wrongful dismissal and breach of contract in respect of course fees) should be varied in favour of Mr Ithia, revoked, reheard and/or relisted in the interest of justice.”

5. He goes on to say that the Respondent ‘*spitefully*’ passed on his details (presumably to the parking control company - the claimant has provided limited information) and proceedings were issued against him in the county court for the unpaid parking fines. Consequently, a judgment in default was issued against him.
6. The basis of his application is, therefore, that Ms Harker lied under oath in saying that the Respondent had to pay the parking fines when it did not.
7. In support of his contention, the Claimant refers to five additional claims against the Respondent all of which were disposed of before this case. One judgment held that the Respondent was in breach of contract in respect of non-payment of an ex-employee’s university course fees. There was no dishonesty found on the part of the Respondent by the Employment Judge, rather there was evidence that the Respondent had made the payment albeit for an unknown

reason it was not received by the university - hence the finding that the Respondent was in breach of contract

8. A second judgment held that the Respondent made an unauthorised deduction from the claimant's (in that case) wages but absent written reasons, the background is unknown.
9. The other three judgments are withdrawal judgments.

The Respondent's submissions

10. The Respondent has responded to the reconsideration application as follows:

"We submit that this was Ms Harker's honest understanding of the position. Ms Harker did not profess to have made the payment personally, only that her understanding was that they had to be paid by the Respondent. The organisation and payment of parking fines does not fall within Ms Harker's job role, the Respondent's administration team is responsible for this. Ms Harker's understanding was based on the fact that she was handed a pile of parking fines incurred by the Claimant that were stapled together. The top one of these stated that it had been paid [p165 of the Final Hearing Bundle].

Therefore, Ms Harker reasonably assumed that all of the fines had been paid. We further submit that fines are sometimes only sent to the van hire company, who forward these straight to employees, therefore, it would have taken considerable effort for Ms Harker to have checked the exact status of these fines.

We contend that this does not affect the integrity of Ms Harker's evidence. We submit that should Ms Harker have made an error in her understanding of the status of the fines, this was an honest mistake, rather than being deliberately untruthful as the Claimant has alleged. Furthermore, the Claimant has focused on one individual error and has failed to provide any new information that would suggest that Ms Harker's evidence as a whole is inaccurate. Therefore, we submit that in the event the Tribunal does have any concerns regarding this individual point, it is not significant enough to suggest that Ms Harker's evidence as a whole is inaccurate"

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules")

11. The Rules provide:

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.....’

12. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural irregularity depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.

Considerations

13. The Claimant submits that the Tribunal’s judgment in respect of discrimination and unfair dismissal should be varied or revoked on the basis that in his view, Ms Harker gave untruthful evidence. However, the Tribunal arrived at the conclusion that her evidence was credible based on the consistent answers she gave in cross examination which corroborated not only her written witness statement, but also the contemporaneous documents.

14. I have reviewed the parking fines in the bundle, all of which were addressed to the Respondent and the fine at page 150 (not page 165) does have a note confirming the date on which it was paid. Ms Harker would have no reason to think that it had not been paid.

15. Additionally, I observe the following:

- i. The previous judgments referred to by the Claimant offer no suggestion of dishonesty whatsoever on the part of Ms Harker.
- ii. The Respondent accepted at the outset of the claim that it owed the Claimant wages and holiday pay – its position was that it was unable to quantify the amount payable because the Claimant had not submitted his timesheets. It did not seek to attempt to deny the Claimant monies he was due which points to honesty rather than dishonesty.
- iii. The Respondent submits Ms Harker's understanding was that the invoices had to be paid by her employer which is entirely credible given they were addressed to the Respondent and further, one had a note on it confirming that it had been paid.
- iv. Ms Harker's witness statement was signed and dated on 18 December 2020 and the county court proceedings were not issued until 9 April 2021 – many months after she signed her statement and after the substantive hearing. It is entirely conceivable that she recorded her understanding of the position at the time based on the documents before her.

16. Given the above factors, I am not persuaded that there is any merit in the Claimant's submission that Ms Harker's evidence was not truthful.

Conclusion

17. Having considered the Claimant's submissions, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked and it is not in the interests of justice to reconsider it. The application is, therefore, refused.

Employment Judge Victoria Butler

Date: 26 August 2021

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