EMPLOYMENT TRIBUNALS

Claimant: Mr. A Eltaib

Respondent: Mr. C Wilday & Others

JUDGMENT

UPON a reconsideration of the judgment dated 14 November 2019 on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the judgment is varied to the following extent: the third sentence of paragraph 35 of the judgment is amended as follows: "The Claimant was licensed as a Hackney Carriage and Private Hire Vehicle ~~Operator~~ **Driver** but at all material times he was driving only a private hire vehicle".

REASONS

1. On 9 September 2020 I wrote to the parties to say that I was of the view on my own initiative that the judgment dated 14 November 2019 should be reconsidered.

2. The proposed reconsideration was to vary the third sentence of paragraph 35 of the judgment to read as follows: "The Claimant was licensed as a Hackney Carriage and Private Hire Vehicle ~~Operator~~ **Driver** but at all material times he was driving only a private hire vehicle".

3. The grounds for the proposed reconsideration were that the reconsideration was necessary in the interests of justice because the paragraph contained a mistake in describing the claimant as an operator rather than a driver.

4. This mistake appeared to be a typing error as neither party asserted (so far as I could recollect) that the claimant was licensed as an operator and I did not consider him to have been an operator. I was concerned that having regard to the view expressed by the sift judge at the EAT the mistake may have the potential to confuse any reader of the judgment and it should therefore be corrected.

5. I considered whether the mistake could be corrected under the slip rule contained in Rule 69 but decided that the parties should have the

opportunity to make representations. I also gave the parties the opportunity to suggest a hearing.

6. Both parties responded. The respondent agreed the judgment should be varied. The claimant opposed the variation.

7. Neither party suggested there should be a hearing and I have been able to take into account the points made by each party in writing. I have therefore decided that a hearing is not necessary in the interests of justice.

8. Notably, neither party suggested that it had been asserted by anyone at the hearing that the claimant was an operator rather than a driver.

9. In responding to the proposed reconsideration, the respondent essentially relied on their submissions prepared for the preliminary hearing in the EAT. I had not seen these prior to my correspondence of 9 September. It is salient that the respondent describes the reference to the claimant as an operator rather than a driver as “obviously a minor typing error”. This was essentially the same view I expressed in my correspondence of 9 September.

10. In contrast the claimant says that the reference to the claimant being an operator rather than a driver was a fundamental error (rather than a typographic error) which was one of number of serious errors. The claimant’s argument that the judgment overall is erroneous is essentially the issue to be considered by the EAT and I do not think it is appropriate for me to comment on that. My view is that the proposed variation – which is to change a single word in the judgment - does not prevent the claimant from putting forward his argument to the EAT, which is the correct forum for it be considered.

11. The claimant goes on to argue that because the claimant has appealed and there is a preliminary hearing listed in the EAT that means the EAT is “seized of the case” and I no longer have any jurisdiction. I reject this argument. The Tribunal’s rules of procedure do not impose any restriction on reconsidering a judgment which has been appealed.

12. The claimant also submits that the reconsideration should be considered by a different judge and asserts that I am conflicted given the submissions made by the claimant at the EAT. I do not accept that point either. First, Rule 72(3) provides that I should carry out the reconsideration unless it is not practicable. Clearly it is practicable for me to do so and it is in my view unrealistic to suggest the reconsideration could be carried out by a different judge in view of the nature of the issue. Second, I do not accept the assertion that I am conflicted in light of the submissions made by the claimant to the EAT. The claimant clearly believes that the reasoning in the judgment is erroneous. He is entitled to present that argument to the EAT but I am not engaging with that – all I am doing is correcting a single typographical mistake. In the circumstances I do not consider that any conflict arises.

13. Finally, the claimant observed the substantial passage of time since the

judgment. This is a fair point. However, the parties did not bring the issue to my attention any earlier and I am of the view that the passage of time since the judgment is not a good reason not to vary the judgment if it would be necessary in the interests of justice to do so.

14. I have therefore decided that the judgment should be varied as set out above. It is necessary in the interests of justice because paragraph 35 contained a mistake in describing the claimant as an operator rather than a driver. This mistake was a typing error as neither party has asserted that the claimant was licensed as an operator and I did not consider him to have been an operator. The mistake may have the potential to confuse any reader of the judgment and it should therefore be corrected as it is necessary in the interests of justice to do so.

Employment Judge Meichen
5 October 2020