# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| **Mr G Seers** | **v** | **Metroline Travel Limited** |

## JUDGMENT ON AN APPLICATION FOR RECONSIDERATION OF A JUDGMENT UNDER RULE 71 OF THE EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2013

1. On 28 April 2021 the claimant applied for a reconsideration under r.71 of the Employment Tribunal Rules of Procedure 2013 of the judgment in this matter which was sent to the parties on 15 April 2021 on the following grounds:

    1.1. The respondent had failed to comply with the order for disclosure of documents made by Employment Judge Bedeau on 23 March 2020;

    1.2. The contested application for disclosure of documents which I heard on 8 December 2020 was wrongly decided;

    1.3. The documents which were not disclosed or ordered to be disclosed would have mean that "questions would have been asked on a much wider range" than that which I suggested in my summary reasons and put the claimant to a disadvantage in the hearing;

    1.4. I wrongly refused to view available video evidence;

    1.5. I wrongful refused to examine clear evidence of "doctored paperwork" and

    1.6. I cut short the claimant's summing up;

    1.7. I wrongly failed to consider that the respondent's attempt to exclude certain documents when concluding that the claimant was not objectively justified in his mistrust of senior management.

2. I take the points relating to the alleged failures of disclosure and the criticism of my decision on the application for specific disclosure together. The only documents which the claimant included in his application for disclosure made before me were those set out in paragraph 8 of the judgment. It is reasonable to consider that those were the relevant documents which he considered the respondent to have wrongly withheld from the original disclosure which was ordered by Judge Bedeau.

3. That order (paragraph 2 of the order sent to the parties on 25 April 2020) was that "the parties shall disclose to each other by list the documents in their possession or control which are relevant to the issues to be determined by the Tribunal" and that "the parties shall" send each other copies of the same. Although that is phrased in the imperative, it applies to documents which are *relevant to the issues to be determined*. The respondent was unable to find certain documents and, in relation to the paperwork for Colleague L, disputed its relevance in all the circumstances. They further argued that to the extent that it was relevant it was not proportionate to order the production of the paperwork because of considerations of the privacy of Colleague L.

4. It may be that I incorrectly described the paperwork for Colleague L as being concerned with performance management when it was, technically, disciplinary. However, given that Colleague L was put on a performance improvement plan (see para.74 of the judgment) that was both understandable and not relevant to the decision I had to make. There was no misunderstanding about the fact that the application was for paperwork concerning the meeting for Colleague L chaired by JC at which the claimant acted as workplace colleague. The alleged relevance of the paperwork, dating from February 2017, was that the claimant said that it showed that he could work amicably with someone with whom he was said to have had relationship breakdown, that it cast doubt on the credibility of ID and the point about a pattern of behaviour of putting forward misleading communications (the document at pages 174 to 175 of the bundle).

5. I stand by the decision not to order disclosure of those documents for the reasons given in paragraph 12 of the judgment. The allegation that ID lacked credibility was put to ID (see para.74 & 75 of the judgment) on the basis of documents which were in the bundle. The argument that there had been an occasion on which the claimant had been able to cooperate with JC (and, indeed, with others) was explored with the relevant witnesses making the decision to dismiss more than 2 ½ years later in relation to the relevant question – namely whether the relationship between the claimant and the respondent had irretrievably broken down. I do not consider that the claimant was disadvantaged by this or that there is a reasonable prospect that the decision not to order disclosure was wrong and that the judgment was wrong as a result.

6. The alleged video evidence referred to is covered at paragraph 78 of the judgment. It is not my recollection that the claimant made an application to show the footage which I refused. In any event, it is clear that the claimant's contention was not just that LW had been in the room at the time he wrote the email in question but had directed him to do so. This was relevant to the claimant's contention that the respondent's managers were responsible for any relationship breakdown.

7. I do not consider that there is a reasonable prospect that viewing the CCTV footage itself would have any effect on my conclusion that the respondent's decision to dismiss the claimant because the relationship between them had irretrievably broken down was one which was open to them. The same is true of the claimant's argument that it should be inferred from the respondent's representatives attempt not to include particular documents in the bundle that his mistrust of senior management was justified. This was an argument he made in his closing submissions and which I took into account. My conclusions only set out those matters which it was necessary to set out in order to explain the decision which I made.

8. Although it is not entirely clear to what the claimant refers as being "doctored paperwork" I believe him to be referring to the file note at page 405 which he criticised in paragraph 101 of his statement as containing an obvious error and not being an accurate record of the conversation. I do not see any reasonable prospect of changing the view I expressed at paragraph 123 of the judgment when I made findings about what happened on 11 April 2019. I took into account the claimant's criticisms of the document at page 405 and RB's explanations for the inaccuracies and reached the conclusions I set out in paragraph 123. Overall, I accepted RB's evidence on what happened.

9. As to the claimant's summing up, the claim had been listed for an additional day for submissions as explained in paragraph 13 of the judgment sent to the parties on 15 April 2021. According to my note of the hearing on 23 December 2020, the claimant spoke from 10.15 am to 11.42 am before a short break and the respondent's representative spoke from 11.56 am to 12.44 pm. Early in his submissions the claimant appeared to be about to make reference to matters which had not been the subject of evidence (additional occasions on which he had been asked to be the workplace colleague for someone who's performance was under scrutiny) and Mr Brown intervened to object. I directed the claimant to avoid referring to procedures which were outside the scope of the documents I had been taken to in evidence. On occasion I told the claimant that there was no need to repeat what was in his witness statement because I would be reviewing it when considering my decision. On occasion I intervened to seek clarification. After he had been speaking for about an hour, I asked him to move on to his submissions about the decision of FOJ, the manager who decided to dismiss.

10. In those circumstances, I do not consider that I cut the claimant's summing up short but that my interventions were appropriate management of the hearing in order to direct the claimant's submissions to what was in issue and avoid him from introducing new matters into evidence.

I confirm that this is my Reconsideration Judgment and Reasons in case number 3321258/2019 and that I have approved the Judgment for promulgation.

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Employment Judge George

Date: …12 August 2021 ……..

Sent to the parties on: .....

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For the Tribunal Office