EMPLOYMENT TRIBUNALS

Claimant: Miss T Jarman

Respondent: Mark Thompson Transport Ltd

RECONSIDERATION JUDGMENT

Upon the claimant's application for reconsideration of the Tribunal's judgment with reasons sent to the parties on 24 August 2021, the application is refused. The original judgment is confirmed.

REASONS

1. Following a final hearing of the claimant's claim on 22-23 July 2021, the Tribunal's written reasons for its oral judgment, requested by the claimant, were sent to the parties on 24 August 2021.

2. The Tribunal's unanimous judgment was that the claimant's complaints of detriment and unfair dismissal contrary to sections 44 and 100 of the Employment Rights Act 1996 respectively were not well-founded. The claim was dismissed.

3. The Tribunal has treated the claimant's emails of 25 August 2021 and 6 September 2021 as an application for reconsideration of the judgment. Those emails were referred to the judge on 16 September 2021. As the reconsideration rules require, the application has been considered by the judge alone (without the members) in the first stage of the reconsideration process.

4. To the extent that those emails disclose a draft appeal to the Employment Appeal Tribunal the judge has taken care not to address the grounds of appeal, which is matter for the Employment Appeal Tribunal and not for the Employment Tribunal. This Tribunal cannot act as a post box for an appeal to the Employment Appeal Tribunal. The claimant must ensure that, if she wishes to appeal, she should do so in accordance with the procedural rules of the Employment Appeal Tribunal.

5. The claimant's grounds for seeking a reconsideration are not entirely clear, but they appear to the judge to be as follows. (1) The claimant was disadvantaged by the respondent serving an amended copy of Ms Blackwell's witness statement on the first morning of the hearing. (2) The claimant was not aware that the respondent had a health and safety committee, and she contends that there was no such committee. (3) The Tribunal has not taken into account all the evidence, including a separate bundle of documents submitted by the claimant. (4) The claimant contests various findings of fact made by the Tribunal. (5) The claimant disagrees with the Tribunal's legal analysis and conclusions.

6. As to (1), it is correct that an amended witness statement was served at the commencement of the hearing. This made clear Ms Blackwell's evidence that the respondent had a health and safety committee. No objection was taken to that amended statement at the time. Ms Blackwell would be entitled and indeed obliged to amend her evidence in order to maintain her affirmation to tell the truth. If her evidence was that there was a health and safety committee, as the documentary evidence suggested, an oral amendment of her evidence would have been sufficient.

7. The claimant may have been taken by surprise by this change in evidence, which was relevant to the claimant's case under sections 44 and 100(1)(c) of the Employment Rights Act 1996, but she did not object to it at the time, and more importantly, it did not prevent her putting her central case, which was that she was subjected to detriment and/or selected for redundancy and/or dismissed because she had raised health and safety concerns.

8. The Tribunal did not accept that case. The presence or absence of a health and safety committee was not an essential element in the Tribunal's findings or conclusions. It was but one aspect of its legal analysis of sections 44 and 100(1)(c). The Tribunal found that the claimant had not been subjected to a detriment, but that if she had been, then it was not due to her raising health and safety concerns. It also found that there was a genuine redundancy situation and that the claimant had been selected for redundancy for reasons that had nothing to do with her health and safety concerns some months earlier. Her dismissal was solely by reason of redundancy and the ultimate timing of that dismissal was due to the claimant bombarding Ms Blackwell with emails about her redundancy.

9. It is possible that the change in Ms Blackwell's witness statement should have necessitated an amendment to the respondent's grounds of resistance. However, even if such an amendment had been considered and made, it would have made no difference to the answer to the question: did the fact that the claimant had raised health and safety concerns play any part in the respondent's treatment of her culminating in her dismissal? It did not.

10. As to (2), although the Tribunal found that as a fact that there was a health and safety committee, as evidenced by the documentary evidence, that fact had only marginal relevance to the application of sections 44 and 100(1)(c). The essential and crucial point was that the claimant's raising of health and safety

concerns – by whatever means – was not the reason for her treatment, her redundancy selection or her ultimate dismissal.

11. As to (3), 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.

12. 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, including the matters that the claimant relies upon in her evidence. The matters contained in the claimant's supplementary bundle were within the Tribunal's consideration. However, no single piece of evidence is conclusive, determinative or decisive.

13. As to (4) and (5), there is nothing in the claimant's application that causes the judge to reconsider the Tribunal's assessment of the evidence or its findings of fact, or to revisit its legal analysis or conclusions. In particular, the substantive or procedural fairness of her selection for redundancy had only marginal relevance to the question of what was the reason or principal reason for her dismissal. The Tribunal was satisfied as to the respondent's explanation for why the claimant was selected for redundancy and as to why she (and indeed others with less than two years' service) were treated as they were in the redundancy selection exercise. It considered but ultimately drew no adverse or negative inferences from the evidence

14. 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 judge 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.

Judge Brian Doyle
Date: 21 September 2021

RECONSIDERATION JUDGMENT & REASONS
SENT TO THE PARTIES ON
4 October 2021

FOR THE TRIBUNAL OFFICE