



EMPLOYMENT TRIBUNALS

Claimant

Mrs R M Ghenea

and

Respondent

SGL Labs Limited (formerly Solitaire
Gemological Laboratories Limited)

JUDGMENT ON RECONSIDERATION

Upon the Respondent's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the Tribunal's Judgment of 1 February 2021, the application to reconsider the Judgment is refused under Rule 72(1) as there is no reasonable prospect of the decision being varied or revoked.

REASONS

Introduction

1. The background to the Claimant's claim and history of the proceedings is set out in the Judgment sent to the parties on 2 February 2021, and accordingly it is not necessary to repeat the details here.
2. The outcome of the Hearing on 1 February 2021 was that judgment was entered in the Claimant's favour and the Respondent was ordered to pay her a total of £1,888.35 without deduction.

Application for reconsideration

3. On 28 June 2021, the Claimant emailed the Tribunal to say that she had not yet received the compensation awarded to her. She asked whether the Respondent had appealed the outcome without notification to her. She was initially given contact details for enforcement methods.
4. The Claimant's email was re-referred to the Employment Judge on 23 September 2021. The Judge caused the Tribunal's administration to carry out a search, whereupon it was found that Mr Soni, a director of the Respondent, had sent in an email to London Central Employment Tribunal on 15 February 2021. The email had two attachments entitled "Tribunal Appeal 1" and "Tribunal Appeal 2". These appeared to be the two pages of EAT Form 1, partially completed by hand.
5. In the body of the second page, the grounds on which the "appeal" is brought are set out thus:

"[The Claimant] had falsified the attendance record during her term at [the Respondent]. Upon detailed investigation we uncovered that she had not attended the office for 48 working days throughout 2019 and had claimed salary without disclosing her absence. Due to the travel restrictions and severe lockdown I am not able to travel to UK and get access to those records and hereby request the Tribunal and the Judge to kindly consider my request to postpone this judgment to a later date. This will allow me to gather proof and present it to the Tribunal. Looking forward to a fair policy support".

6. The covering email said much the same thing, concluding "*Looking forward to this much-needed extension to bring facts across*". The message was not copied in to the Claimant, contrary to the Rules, and nor would it appear it was sent to the Employment Appeal Tribunal (EAT), to whom appeals from the Employment Tribunal lie. However, it was copied to Ms Shirin Bandukwalla, who is listed at Companies House as another of the Respondent's directors.
7. Since the form was not sent to the EAT, it will not have been registered as an appeal and in any event, it was both incomplete at points 3 and 4 (with no Tribunal location and no parties' names) and failed to attach the necessary documentation contrary to point 5 so that it could not have been accepted in any event.
8. The late discovery of this email in the Tribunal's inbox has meant that the Tribunal has decided accordingly to treat it instead as an application for reconsideration, since it was presented within 14 days of the date the Judgment was sent to the parties, and was therefore in time. It was not considered necessary for the Tribunal to seek the Claimant's comments on the application, for the reasons set out below.
9. **Rules**
The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

70. Principles

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.

71. Application

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.

72. Process

- (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.*
 - (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*
 - (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.*
10. The Tribunal's task at this stage is to consider whether reconsideration of the decision of 1 February 2021 is in the interests of justice. Where it considers there is no reasonable prospect of the decision being varied or revoked, under Rule 72(1), the application shall accordingly be refused.

Conclusions

11. This reconsideration application was considered at the initial (Rule 72(1)) stage on the papers. The Respondent's application provides no clear reason as to why it would be in the interests of justice to reconsider the decision.
12. In paragraph 3 of the Judgment with reasons, it was observed that the Respondent submitted a response on 8 March 2020, referring to the alleged manipulation by the Claimant of attendance records and asserting that a detailed internal report and enquiry had been conducted which, it can be inferred, led it to make the deductions of which the Claimant complained. At paragraph 4 it was observed that the parties had been ordered by the Regional Employment Judge on 23 March 2020 to exchange documents by 4 April, and the Respondent ordered to produce a Hearing bundle by 14 April 2020. The Hearing did not take place for a further nine and a half months, during part of

which time, it is accepted that there were travel restrictions in place. However, there has been no explanation for why neither Mr Soni nor Ms Bandukwalla, whether themselves or through another person in the UK, has failed to produce the report that they say prompted them to make the deductions from the Claimant's pay. The Respondent continues to trade in London; the address for service on the Respondent as set out in the EAT form signed by Mr Soni remains the one in Hatton Garden where the Claimant worked.

13. In any case, it seems highly unlikely that, if it existed, the report would be unavailable in virtual format to the directors or, in the intervening 18 months since the ET3 was submitted, could not have been scanned to them for inclusion in a bundle of evidence for the Tribunal to consider. The inference drawn from its absence is that the report does not, in fact, exist.
14. The Respondent has been given ample opportunity to defend the claim, to present its evidence and to appear at the Hearing. It chose not to participate at all in the proceedings following submission of the ET3. Further, it has produced no new evidence and is seeking merely in the reconsideration application to re-argue that which has already been considered and decided. The Judgment records at paragraph 6 that far from showing that the Claimant had been absent from work during 2019, Mr Soni said on 2 January 2020 that she had done "a wonderful... a fantastic... an excellent job" in an attempt to keep her in the Respondent's employment, before making what amounted to threats to withhold her P45 if she maintained her decision to leave the business.
15. In all the circumstances, there is nothing in what is now said by the Respondent which indicates that it is in the interests of justice to re-open matters. This application is refused as there is no reasonable prospect of the decision being varied or revoked.

Employment Judge Norris
Date: 30 September 2021
JUDGMENT SENT TO THE PARTIES ON

30/09/2021

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FOR THE TRIBUNAL OFFICE