



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hayat Khan
Respondent: Debar Limited
On: 12 November 2021
Before: Employment Judge McAvoy Newns
At: Leeds Employment Tribunal

Appearances:

For the Claimant: Miss J Duane, Counsel
For the Respondent: Mr G Fawthrop, Lay Representative

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration of the compensation for the Claimant's successful breach of contract claim is refused.

REASONS

1. For the reasons given orally at the hearing, the Claimant's claim for breach of contract succeeded and the Respondent was ordered to pay the Claimant the sum of £987.09. This was the balance of the notice pay which the Claimant was entitled to.
2. The Respondent had paid the Claimant his notice pay based on his entitlement to statutory sick pay, rather than normal pay, which I found contravened section 88(1)(b) of the Employment Rights Act 1996.
3. At the end of the hearing, the Respondent made an oral application for a reconsideration of this decision on the basis that the Respondent did not know

the Claimant was incapable of work because of sickness or injury between 30 March 2021 and 8 April 2021. The Respondent submitted therefore that his notice pay between these dates ought to have been based on his entitlement to statutory sick pay, rather than normal pay.

4. Rule 70 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237 (**Rules of Procedure**) states:

“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”.

5. Rule 71 of the Rules of Procedure states:

“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”.

6. Rule 72 of the Rules of Procedure states:

- (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”.

7. In accordance with the above mentioned Rules, I suggested to the Respondent's representative that the application for reconsideration ought to be made in writing, after the hearing. However, the Respondent's representative wished to make their application orally and, as I considered doing so was in line with the overriding objective, and making an oral application for reconsideration is permitted by Rule 71, I allowed him to do so.
8. As the Respondent made the application for reconsideration orally at the end of the hearing, I allowed the Claimant to present their response to the application orally. This approach was consented to by the parties.
9. In response, the Claimant confirmed that he was incapable of work because of sickness or injury between 30 March 2021 and 8 April 2021 and provided me with fit notes confirming this. These fit notes were also provided to the Respondent.
10. I have concluded that it is not necessary in the interests of justice to vary or revoke my judgment in respect to the compensation awarded for the Claimant's breach of contract claim. Even if it was the case that the Claimant did not provide the Respondent with his fit notes at the time, the Claimant has now provided evidence that he was incapable of work because of sickness or injury between 30 March 2021 and 8 April 2021. Consequently, in accordance with section 88(1)(b) of the ERA, his notice pay should have been calculated with reference to his normal pay rather than his statutory sick pay.

Employment Judge McAvoy News

29 November 2021