



EMPLOYMENT TRIBUNALS

Claimant: Miss Wendy Phillips

Respondents: MNE Accounting Limited

Heard at: Nottingham

On: 14 December 2021

Before: Employment Judge Blackwell

Decision of application for reconsideration

JUDGMENT

1. The Claimant's application for reconsideration dated 5 October 2021 of a reserved decision sent to the parties on 23 September 2021 (the original decision) is refused.

REASONS

Relevant Law

1. Rule 70, 71 and 72 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013:

“RECONSIDERATION OF JUDGMENTS

Principles

70. 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.

Application

71. 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.

Process

72.—(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”.

Introduction

2. By an email on 5 October Miss Phillips made an application for a reconsideration of the original decision. On 12 October I ordered: -
 1. That the Respondent should reply to the application by not later 9

November 2021.

2. That both parties by the same date should indicate whether the application can be determined without the need for a hearing.

3. The parties should still comply with the orders sent to the parties on 23 September 2021.

4. The Respondent's indicated that they wished for the matters to be considered on the papers. By email of 9 November Miss Phillips requested a further hearing. On balance and having regard to the overriding objective and in particular costs and the lengthy written submissions on both sides I determined that the matter be decided on the papers.

5. Notice was accordingly sent to the parties on 30 November inviting further representations. No further representations were received.

Miss Phillips's Application

3. Miss Phillips's application at paragraphs 1 and 2. Miss Phillips makes further reference to the ***Neufeld and Dugdale*** cases both of which I considered and were referred to in the original decision.

4. Miss Phillips then moves on to findings of fact and makes reference to paragraphs 14, 18, 21 and 22. I note what she says but the additional comments have no bearing on the decision.

5. As to paragraph 23 I accept that in relation to holidays and statutory sick pay Miss Phillips was treated in the same way as all of the other employees of Sigma. As to paragraphs 25 and 26 nothing set out by Miss Phillips would change the findings of fact that I made in these paragraphs. As to paragraph 26 the fact that Miss Phillips has taken legal advice about the advice, she received from her Solicitors is of no relevance.

6. As to her comments on paragraph 28 again there is nothing set out which would change my findings of fact. As to Miss Phillips repeated complaints about a spreadsheet originally produced by the Respondent's Counsel on 13 July 2021 Miss Phillips recollection is wrong. I indicated at both hearings that I would accept it as a summary of material already within the bundle unless Miss Phillips challenged it which she did not at either hearing. As the Respondent's response records, I did take Miss Phillips to examples in the bundle which indicated that the summary was at least in those regards correct. Miss Phillips was given every opportunity to challenge the summary and she did not.

7. As to Miss Phillips comments on paragraph 30 they are not relevant to the original decision. As to paragraphs 31 and 32 in respect of Miss Phillips workings hours I accept that I was wrong to say, "as to working hours the evidence does not reflect Miss Phillips assertion of a 37.5 hour week". On a re-reading of the pages referred to by Miss Phillips in her application I accept that by and large they do reflect a

37.5 hour week. As to paragraph 34 in relation to hours worked which were not paid for nothing set out in Miss Phillips application would change my finding of fact. Also, under paragraph 34 I accept that Miss Phillips did refer me to the case of ***Stack v Ajar-Tec Limited*** and states that the case has not been considered at all. This is not so it was considered but, in my view, it is simply only another case that confirms that a Director could be an employee. Indeed, in the Stack case the Claimant had a much smaller shareholding than Miss Phillips.

8. I am not entirely clear that I follow Miss Phillips comments on paragraph 35.
9. Miss Phillips then moves on to matters that she feels had been overlooked. Firstly, as to the duties of a Director it does not seem to me that they are directly relevant to the original decision. As to paragraph 2 these seem to centre on the professional duties of an ACCA and again I accept that Miss Phillips was subject to regulation and was required to complete CPD. As to paragraph 3 it is inappropriate at this late stage to introduce new evidence.
10. As to her paragraph 5 the Respondent is right to submit that it was throughout Miss Phillips case that I should look at the whole of her working life with Sigma and it is not now open to her to pick and choose which 2 years I should now consider. She goes on to make further reference to the accuracy of the spreadsheet about which I have commented above in paragraph 6. Further at no stage did the Respondent's Counsel accept that it was a misleading document.
11. As to the final paragraph 6 see paragraph 3 of the original decision. Miss Phillips was given an extended lunch hour so as both to consider whether her final written submissions needed to be supplemented and to consider Counsel's skeleton argument. Miss Phillips also had the final word Mr Ali going first.

Conclusions

12. In my view the only significant matters raised in the reconsideration are those in relation to Miss Phillips working hours and I accept that I was in error at paragraph 31 and 32. However, that error is not enough in my Judgment to shift the balance in Miss Phillips favour for the reasons set out in the original decision. The original decision therefore stands.

Employment Judge Blackwell

Date: 10 January 2022

JUDGMENT SENT TO THE PARTIES ON

11 January 2022

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