



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4110357/2021**

**Employment Judge M Brewer**

**Mr H R Gresham**

**Claimant**

**Animal and Plant Health Agency**

**Respondent**

# **JUDGMENT**

The claimant's application dated **21 January 2022** for reconsideration of the judgment made on **12 January 2022** is refused.

# REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the following reasons.
2. The application for review is based upon the following reasons:
  - a. That the claimant did work and have earnings in November 2020 whereas the judgment says he did not;
  - b. The claimant's October pay slip was incorrect;
  - c. The claimant has, since the Tribunal concluded, received a tax rebate;
  - d. The claimant has now received the Early Years Update document;
  - e. What the claimant refers to as factual errors.
3. The claimant pursued a "last straw" constructive dismissal case. He relied upon four issues each of which comprised a number of straws. These four issues were agreed by the claimant at a case management preliminary hearing.
4. His clear evidence was that the last straw was the failure by the respondent to provide him with documents he had been promised would be supplied by 5 February 2021. This fell into the first issue identified at the case management hearing – the failure to provide the claimant with accurate and proper pay slips/payroll records.
5. I found that the only missing pay slip, the only missing record to which the claimant was entitled therefore, was that for November 2020. I found that this made no difference to the claimant's knowledge of his earnings as that pay slip would have shown no earnings or deductions a fact which was known to the claimant. The

claimant now says this was incorrect and in fact he worked in November 2020 but because of a deduction for a previous overpayment of wages the effect was that his earnings were wiped out. The claimant's evidence to the Tribunal which I have checked was that he did not work in November. He may have mis-remembered of course. In my judgment nothing turns on this because whether he worked and had those earnings wiped out because of a deduction for an overpayment of wages, or he did not work, the overall on his earnings was the same.

6. More importantly, the claimant did not resign because he did not receive this pay slip, nor did he resign because as he now says his October pay slip was incorrect. He continued to work well beyond a reasonable period after he was aware of these matters (giving rise to an affirmation issue). The claimant resigned, he said, because, as I have said above, of the failure by the respondent to provide him with documents he had been promised would be supplied by 5 February 2021.
7. I found that, viewed objectively, although there were a number of matters which were irritating to the claimant, there was not a course of conduct which can be said to have cumulatively amounted to a repudiatory breach of trust and confidence. Nothing in the claimant's application for reconsideration alters that view. The November pay slip does show a zero balance. The claimant did not resign because the October pay slip was incorrect.
8. However, and more importantly, I refer the claimant to paragraph 85 of my judgment. I found that the evidence showed that the claimant did not resign in response to a fundamental breach of contract. Paragraph 85 is as follows:

*85. Even if I'm wrong about that, and I do not consider that I am, the claimant's claim would fail on the question of causation. The claimant was very clear that the last straw occurred on 5 February 2021 when SSCL failed to provide him with the payroll information he required of them and which indeed they had promised to provide by that date. That is a matter which falls within the first straw relied upon by the claimant. But as I have found, in conversation with the respondent on 28 January 2021 the claimant had*

*already evinced an intention to resign, that is to say he had decided to resign by giving notice on 6 February 2021, to end on 28 February 2021, before the purported last straw which he says caused the breach of trust and confidence, and the last straw did not therefore operate to create cumulatively with other matters a fundamental breach of contract or, if it did, that did not cause the claimant to resign, he had already decided to do so. In other words, the claimant had decided to resign before he says there was a fundamental breach of the implied term of trust and confidence and therefore the breach of the implied term of trusted confidence, if there was one, and I have found of course there was not, did not cause the resignation and to be clear, it was not any cause of the resignation.*

9. Nothing in the reconsideration application makes any difference to this finding and therefore, as I have stated above, there is no reasonable, in fact there is no prospect of the original decision being varied or revoked and the application is therefore refused.

**Employment Judge:  
Date of Judgment:  
Date sent to parties:**

**M Brewer  
21 January 2022  
24 January 2022**