



EMPLOYMENT TRIBUNALS

Claimant: Mr C Riley (1)
Mr P Whitby (2)
Mr P Jones (3)
Mr B Irvine (4)

Respondent: G4S Secure Solutions (UK) Limited

RECONSIDERATION JUDGMENT

The application from the fourth Claimant, Mr Irvine, dated 22 December 2021 and the application from the Respondent dated 22 December 2021 for reconsideration of the judgment sent to the parties on 16 December 2021 is refused.

REASONS

1. On 22 December 2021 the Fourth Claimant wrote to the Tribunal as follows:

'I believe there has been an error in my judgment as it states I was claiming for 20 days paid at 8.4 and 8 days paid at 8.4. This wasn't the case it was 20 paid at 12 hours and 8 hours paid at 8.4.'

2. As Mr Irvine is a litigant in person, I took this to be a request for reconsideration of my judgment sent to the parties on 16 December 2021, despite it not being expressly stated to be such an application.
3. On 22 December 2021, the Respondent wrote to the Tribunal highlighting a typographical error at §30, where “235.5” should read “235.2” (for which a Certificate of Correction and Amended Judgment will be issued,) and making a request for reconsideration, inviting me to revoke the Judgment relating to the decision that the claimants are entitled to 28 days’ leave per annum (a day being a 12 hour shift).
4. Both requests were made within 14 days of the Reserved Judgment being sent to the parties and were therefore made in time in compliance with Rule 71 Employment Tribunal Rules 2013.
5. Rule 70 provides that a tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and the decision may be confirmed, varied or revoked. Further, Rule 72 provides that an Employment judge shall consider any application made under Rule 71 and if they consider that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the tribunal shall inform the parties of the refusal.

Mr Irvine’s application

6. As the Written Reasons made clear (§17-18), some time was spent with the parties clarifying that the dispute related to the number of days holiday *leave* that the claimants were entitled to, i.e. not holiday *pay* entitlement and whether the written statements reflected the holiday *leave* entitlement.
7. The Written Reasons do deal with some evidence in relation to what holiday pay the claimants did in fact receive, which included the evidence set out at §51(b) which I accepted, which was that Mr Irvine agreed would be ‘20 days paid at 8.4 hours ‘topped up’ and 8 days paid at 8.4 hours (my emphasis)’.
8. I conclude that there has been no error in the Judgment and that the application for a reconsideration from Mr Irvine has no reasonable prospects of success.

Whitby

9. Whilst some findings of fact were made as to what Mr Whitby received by way of holiday *pay* (§39), the finding regarding holiday *leave* was set out at both
 - a. §39 - ‘he took 28 days’ leave per year’; and

- b. §40 - 'received 28 days' (i.e. 28 x 12 hour shifts) holiday leave (my emphasis) from 2010 until December 2019'.
10. The finding at §40 (and indeed §39) in relation to holiday *leave*, does not contradict the finding in relation to holiday *pay* at §39.
11. No finding or conclusion has been made that Mr Whitby had been paid 12 hours' holiday pay for each of the 28 days' holiday leave, as has been suggested in §7 of the Respondent's request for reconsideration.
12. As reflected in §39 of the Written Reasons, the finding was that Mr Whitby received 28 days' *leave* per year, for which he received:
 - a. Holiday *pay* for 12 hours, for the first 20 days; and
 - b. Holiday *pay* for 8.4 hours only, for the remaining 8 days' leave.
13. Whilst not expressly stated in the Written Reasons, the result of this was that for each of the remaining 8 days' leave taken (of 12 hour days or shifts,) 3.6 hours of each 12 hour day/shift leave, was taken as unpaid leave.
14. There is no finding or conclusion in the Written Reasons that Mr Whitby is entitled to be paid for the full 12 hours for each of the 28 days' holiday leave taken. The finding with regard to holiday *pay*, reflected in §39 of the Written Reasons does not impact on the Judgment regarding holiday *leave*.
15. The conclusion that Mr Whitby was entitled to 28 days' holiday *leave* per annum, a 'day' being a 12 hour shift, does not contradict express terms relating to holiday *pay* reflected in Mr Whitby's contract of employment [170], as varied in February 2015 by the Respondent when the Respondent advised Mr Whitby that the rate of holiday *pay* had changed (see §38 Written Reasons).
16. Conclusions in relation to *leave* and the determination of a 'day being a 12 hour shift' does not displace any express written terms regarding *pay*.
17. The purpose of reconsideration is to consider whether it is in the interests of justice to vary or revoke the decision. Decisions must be made in the light of the overriding objective to deal with cases fairly and justly and the strong public interest that there should, so far as possible, be finality of litigation.
18. For the reasons provided, I concluded that there is no reasonable prospect of the original decision being varied or revoked following consideration of the application from the Respondent in relation to Mr Whitby.

19. Mr Riley's evidence, set out at §49 of the Written Reasons, was that he was entitled to '20 days' leave paid at 12 hours and 8 days' leave at 8.4 hours (my emphasis and omitted from §13 of the Request for Reconsideration)'.
20. Mr Irvine's evidence, reflected at §51(b) of the Written Reasons, was that it was verbally agreed that holiday would be '20 days paid at 8.4 hours 'topped up' and 8 days paid at 8.4 hours (again, my emphasis and omitted from §14 of the Request for Reconsideration)'.
21. The finding at §53 of the Written Reasons was that '*their holidays would be 28 days per year,, and that the rate of pay (my emphasis) for the first 20 days holiday leave would be calculated on a different basis to the subsequent 8 days*'.
22. §68 of the Written Reasons sets out my conclusions in relation to the express agreed terms. I also found that Mr Irvine had not signed the contract of employment (§54 Written Reasons). Whilst not expressly stated in the Written Reasons, I also was not satisfied, for the same reasons regarding e-signatures, that the Respondent had proven that Mr Riley and/or Mr Jones had expressly agreed and/or signed the terms of their written contracts of employment.

Conclusions

23. The purpose of a reconsideration is not to respond to specific questions requested by the party seeking reconsideration. It is to consider whether it is in the interests of justice to vary or revoke the decision. Decisions must be made in the light of the overriding objective to deal with cases fairly and justly and the strong public interest that there should, so far as possible, be finality of litigation.
24. For the reasons provided, I concluded that there is no reasonable prospect of the original decision being varied or revoked following consideration of the application from the Respondent in relation to Mr Riley, Mr Jones and Mr Irvine.

Employment Judge R L Brace

Date 27 January 2022

JUDGMENT SENT TO THE PARTIES ON 17 February 2022

FOR THE TRIBUNAL OFFICE Mr N Roche