EMPLOYMENT TRIBUNALS

Claimant: Mr N Cunningham

Respondent: Royal Mail Group Limited

JUDGMENT

The claimant's application for reconsideration of the Tribunal's judgment sent to the parties on 24 January 2022 is refused because there is no reasonable prospect of the judgment being varied or revoked.

REASONS

1. By rule 70 Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, an Employment Tribunal has a general power to reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the judgment may be confirmed, varied, or revoked.

2. Rule 72 (1) empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

3. When determining whether it is in the interests of justice to reconsider this matter the Tribunal has a discretion (which must be exercised judicially) giving effect to the overriding objective to deal with cases fairly and justly not only to the interests of the party seeking reconsideration but also the interests of the other parties to and to the requirement that there should, so far as possible, be finality in litigation. This means the claimant does not have a right to relitigate matters which gave rise to the Judgment nor to have a second chance to present further evidence which could reasonably have been made available at the time of the original hearing (*Stevenson v Golden Wonder Ltd 1977 IRLR 474 EAT*).

4. Reconsideration requires an application to be presented to the Employment Tribunal in writing and copied to the other parties (rule 71). I am satisfied this has been done within the applicable timeframe of 14 days from the date my reserved judgment was sent to the parties on 22 January 2022.

5. I now consider whether there are reasonable prospects of the judgment being varied or revoked, applying the interests of justice as set out above.

6. The basis upon which the claimant seeks a reconsideration is contained in an email to the Tribunal dated 3 February 2022 and copied to the respondent. In that document the claimant submits "door to door" ("D2D") allocated to him in Kings Mount/Chapel Street was **not** his sole responsibility He argues this issue was not properly investigated by the respondent and wishes the Tribunal to receive further evidence on this topic (which he is currently gathering).

7. The application is in fact a repetition, albeit an updated one of an argument presented to both the disciplinary hearings and the Tribunal that he "shared" his round with other workers, including his colleague, Stuart Metcalfe. This was not disputed by the respondent and my findings were to the same effect (26 and 73(2)). (Any references to made numbers in brackets in this document is a reference to the paragraph numbers within the main judgment).

8. The point was that all employees had a personal responsibility to complete their allocation of D2Ds **whether the work was shared or not.** Although this issue of work sharing was relevant to the respondent's investigation, it did not have any important influence on the outcome of either the disciplinary hearings nor my finding that the claimant was fairly dismissed. This is because the decisive evidence evaluated by the respondent was from a conversation with Stuart Metcalfe overheard by a colleague, Angela Shields, to the effect that the claimant would not complete his D2D items until Monday 29 July 2019 which was beyond the deadline for completion of the work on Saturday 27 July. Stuart Metcalfe added that:

> "It's not the first time I've spoken to Neil about D2Ds. He's pulled them out of the frame when I've put them in and he would just turn around and say 'it's none of your business'." (59)

9. Mr Metcalfe also narrated, in response to a question posed by his colleague, Angela Shields, that the claimant had said that he "doesn't do D2D" (62).

10. The detailed evidence given by these two witnesses was corroborated by the statements taken from other workers including one who stated he had challenged the claimant "many times" about failure to deliver (33). Also, there was evidence of a surplus of undelivered items found in the claimant's draw/fittings (26). My judgment sets out the evidence in fuller detail.

11. The disciplinary charge was intentionally narrow one being restricted to failure to deliver on the one day of 27 July 2019. The “wider picture” was far less determinative of the matter before the Tribunal which had to focus on the misconduct surrounding the 27 July.

12. For the above reasons, the application for reconsideration is refused and is dismissed.

Employment Judge Ganner
Date: 11 February 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 February 2022

FOR THE TRIBUNAL OFFICE