



EMPLOYMENT TRIBUNALS

Claimant: The estate of Mr Richard Pickard (deceased)

Respondent: Mr D Robson

JUDGMENT

I refuse the respondent's application for reconsideration of the judgment of the Tribunal that the respondent breached Mr Pickard's contract of employment by dismissing him without notice.

REASONS

1. In its judgment of 26 January 2021 the tribunal upheld the complaint that Mr Robson breached Mr Pickard's contract of employment by dismissing him without notice. By an email dated 21 April 2022, Mr Robson seeks reconsideration of that decision.
2. A tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so: Rule 70. An application by a party for reconsideration may be made at a hearing or in writing. If it is made in writing, it must be presented, with copies to all 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, if later, within 14 days of the date that the written reasons were sent, and it must set out why reconsideration of the original decision is necessary: rule 71. A tribunal has the power under rule 5 to extend the time limit in appropriate cases.
3. Mr Robson's application for a reconsideration under r71 must first be considered by me as the judge who chaired the full tribunal which made it. If I consider there is no reasonable prospect of the original decision being varied or revoked, I must refuse the application. If I consider that there is some reasonable prospect of the original decision being varied or revoked I must seek a response from the claimant and seek the views of the parties on

whether the matter can be determined without a hearing. The application is then to be determined by the full tribunal, whether it is dealt with at a hearing or on the papers.

4. In deciding whether it is necessary to reconsider a judgment in the interests of justice, the tribunal must seek to give effect to the overriding objective to deal with cases fairly and justly. That includes taking into account established principles. Those established principles mean the tribunal must have regard not just to the interests of the party seeking the review, but also to the fact that a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final and to the public interest requirement that there should, as far as possible, be finality of litigation. As the court stressed in *Flint v Eastern Electricity Board* [1975] IRLR 277, QB 'it is very much in the interests of the general public that proceedings of this kind should be as final as possible.'
5. Mr Robson seeks to rely on new evidence and a new legal argument. He says:
 - 5.1. He learned from information disclosed by Ms Hallam in her submissions or evidence for the remedy hearing that Mr Pickard did not have an ENG1 medical certificate during his employment.
 - 5.2. It is a legal requirement for all seafarers to have a valid ENG1 certificate.
 - 5.3. The absence of such a certificate may mean that the claimant's contract of employment was void.
6. Where it is sought to persuade a tribunal, in the interests of justice, to reconsider its judgment on the basis of new evidence the test set out in *Ladd v Marshall* applies. Normally that means showing:
 - (a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing;
 - (b) that it is relevant and would probably have had an important influence on the hearing; and
 - (c) that it is apparently credible.
7. With regard to point (b), the new evidence is only relevant and would only have had an influence on the outcome of the hearing if the fact that the claimant did not have an ENG1 certificate did render his contract of employment void and unenforceable.
8. Mr Robson has not identified the particular statutory provision or a provision in any other legal instrument that says the claimant was required to hold an ENG1 certificate in order to do the job he was employed by Mr Robson to do, on the dates he did that job, on the vessel on which he worked and in the location he worked.
9. Even if such a requirement exists, it does not automatically follow that:

- 9.1. it was unlawful for Mr Pickard to enter into a contract of employment to do that work; and
- 9.2. the absence of such a certificate rendered the claimant's contract of employment entirely void and unenforceable by him.
10. Mr Robson does not positively assert that those consequences follow from a requirement to hold an ENG1 certificate (assuming such requirement applied to Mr Pickard). Mr Robson says only that the lack of an ENG1 certificate **may mean** that the claimant's contract of employment was void.
11. Given the speculative nature of the application and the fact that Mr Robson has not identified any legal provisions that could be construed as voiding the Mr Pickard's contract of employment, I conclude that there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application.
12. That being the case it is unnecessary for me to decide whether to exercise my discretion to permit the claimant to make his application outside the usual 14 day time limit.

Employment Judge Aspden

Date 12 May 2022