EMPLOYMENT TRIBUNALS

Claimant: **Mr A Lewis**

Respondent: **BCA Logistics Limited**

ORDER ON APPLICATION FOR RECONSIDERATION

The application for reconsideration of the judgement dated 4 April 2022 is dismissed on the basis that there is no reasonable prospect of the decision being varied or revoked.

REASONS.

1. By application dated 22nd April 2022, the claimant seeks reconsideration of my judgment dated 4 April 2022. Written reasons were requested and provided on 13 may 2022.

2. The application for reconsideration is made under rule 71 of the Employment Tribunal's Rules of Procedure. The process under rule 72 is for the judge who chaired the full tribunal to consider the application and determine, firstly, whether he or she considers that there is no reasonable prospect of the original decision being varied or revoked. If the judge is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.

3. For the reasons I will set out below I do not consider that there is any reasonable prospect of the original decision in this case being varied or revoked and, therefore, I refuse the application for reconsideration.

4. In approaching the application for reconsideration I have considered the cases of of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated "*An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here*"

5. The Grounds for the application fall into 2 parts (as described at the outset of the application) being an assertion that the tribunal made a mistake in the way it reached his decision as a result of misleading evidence from Mr Atkins and that new evidence in the form of email discovery had become available.

6. The arguments put forward in respect of the first part are an attempt to re-open and re-argue the matter that is already determined. The claimant puts forward arguments that either were or could have been advanced at the previous hearing. It would be contrary to the principle of finality in litigation for the claimant to be allowed to re-argue the case in that way.

7. The application in respect of new evidence is not, in my judgment, in respect of evidence which was not available to the claimant prior to the hearing. The claimant says that it was not available to him because he had not been aware that he could assign his work email account to his own personal Microsoft Outlook account at home. However he has given no explanation as to why he could not have found that information out prior to the hearing or how he became aware of it after the hearing.

8. In any event, the evidence which the claimant would seek to rely upon - being an email from the head of payroll - does not support his claim. It is an email that says that the claimant had been paid based on average hours. The claimant may have worked an average of 8 hours per day, but that is not evidence that he was contractually entitled to work for 8 hours a day. In fact, the fact that the respondent was using an average of 8 hours work per day, rather than any contractual entitlement which the claimant had to work 8 hours per day, supports the respondent's case.

9. The remainder of the application makes new points arising out of the implied term of trust and confidence. That issue was not determined on the last occasion nor raised by the claimant. The claimant also makes certain points about a change to his original place of work, but that is not a point which was raised at the last hearing or in issue at the last hearing. The final part of the application refers to the case of *Harpur v Brazel,* but I did not determine any issues of holiday entitlement. That is a matter for the future.

10. In short, I consider that all the points raised by the claimant which are relevant to the decision that I have made are ones which could or should have been raised previously and to reopen the decision now would be contrary to the principle of finality. The application is therefore dismissed.

Employment Judge Dawson
Date 8 June 2022

Sent to the parties: 16 June 2022

FOR THE TRIBUNAL OFFICE