



# EMPLOYMENT TRIBUNALS

**Claimant: Mr S Newall**

**Respondent: British Airways plc**

**Case No 3302532/2020**

**UPON APPLICATION** made by letter dated 10 March 2022 to reconsider the judgment dated 16 February 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and upon the response to application of the respondent dated 25 March 2022 and without a hearing,

## JUDGMENT

1. The claimant's application to reconsider a s.13 Employment Rights Act claim for unlawful deduction of wages is dismissed.
2. The claimant's application to reconsider the basic award due to s.156 Trade Union Labour Relations Act 1992 succeeds and the basic award is varied to £5307.20.
3. Paragraph 2 of the Judgment dated 16 February 2022 is varied therefore to read " The claimant's claim for unfair dismissal under s.152 TULRCA is successful and the respondent must pay the claimant £11,874.01".

## REASONS

4. The claimant made an application on 10 March 2022 to vary the reserved judgment sent to the parties on 16 February 2022. The application requested reconsideration of two aspects of the judgment:-
  - a. Firstly, the claimant asserted that he had made a claim under s. 13 Employment Rights Act 1996 (ERA) for non-payment of wages and that this was due to him under s.169 Trade Union Labour Relations Act (TULRCA). He asserts that he should receive compensation for the full period of August 2016 to November

2019. He asserts that the reason why the claim was not issued in time, was due to pursuing the internal procedure of the Respondent and therefore no time bar should apply.

- b. Secondly, the claimant asserted that the basic award made by the Tribunal is subject to s. 156 TULRCA and should be awarded at the relevant basic award of £6,634. He also asks for an award in the middle Vento band and an uplift to his award.
5. The respondent wrote to the claimant and tribunal on 25 March 2022 in response to the application setting out that the reconsideration is not necessary under rule 72 and is not in the interests of justice.
6. The respondent asserted that the claimant had not made out his claim for reconsideration of the award of wages. They also asserted that he was not entitled to a further award of damages, as the Tribunal had made their decision on the factual basis they had concluded.
7. The Tribunal first considered whether a hearing was necessary to consider the points raised by the claimant. The Tribunal considered rule 72(2) which indicates that a hearing is not required where both parties have been given the opportunity to make their submissions. The Tribunal were satisfied that both parties had provided their points to the Tribunal and that a further hearing of the application would not be expeditious or necessary in the interests of justice.

## **Decision**

8. The Tribunal considered the claimant's application that he had made a claim under s. 13 ERA for unlawful deduction from wages. The Tribunal were satisfied that the claimant had not asserted a s.13 ERA claim at the outset of the final hearing, when the list of issues was discussed in detail. The claimant had confirmed that his claim was only brought under s.169 TULRCA.
9. It is not open to the claimant to change the basis of his claim after judgment has been given and therefore no claim under s.13 ERA can now be considered. The claim has been correctly considered under s.169 TULRCA.
10. With regard to the length of time for which compensation was awarded; the Tribunal made an award for pay in relation to trade union duties on the basis of the agreement which had been reached between the employees and employer at the time of the claimant's dismissal. At that time, there was no agreement as to pay in arrears for the period prior to August 2019. There was therefore no evidence to support the claimant's case that such wages were due and owing.
11. Furthermore, in relation to the limitation point; The claimant's assertion that he (and others) had spent time engaging with the respondent's internal grievance procedure, did not stop limitation from running. The ACAS code on grievance does not suggest that limitation will be halted if an internal process is pursued. It was reasonably practicable for him to have brought a claim for s. 169 TULRCA at an earlier time, had he chosen to do so. The fact that he later brought the claim and that he had supported or issued a grievance indicates that he was aware of the potential claim, but did not issue a Tribunal claim at that time.
12. The Tribunal concluded that they would not review the award under s.169 TULRCA for pay lost due to trade union activities.

13. The Tribunal then considered the second application in the claimant's reconsideration. The Tribunal noted that s.156 TULRCA was not drawn to the Tribunal's attention by either party in their closing submissions on compensation. Having now been drawn to it by the claimant, he is entirely correct to notify us that the starting point for damages must be £6634 (at the relevant time). The Tribunal made a decision that there would be a 20% reduction in damages for the contributory actions of the claimant. This remains and therefore the award is varied to £5307.20
14. The Tribunal noted that the claimant also asked the Tribunal to reconsider the issue of an award for injury to feelings and also an ACAS uplift for failure to follow procedure. The Tribunal decline to vary their judgment to include these. The award of injury to feelings is not allowed for a claim of this type. The Tribunal made a decision not to award an ACAS uplift in the original judgment and see no reason to vary that decision.
15. The original judgment is therefore varied to amend the sum of the basic award to £5307.20 and hence paragraph 2 of the Judgment dated 16 February 2022 is varied to read " The claimant's claim for unfair dismissal under s.152 TULRCA is successful and the respondent must pay the claimant £11,874.01".

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Employment Judge **Cowen**

**10 June 2022**

JUDGMENT SENT TO THE PARTIES ON

**24 June 2022**

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FOR THE TRIBUNAL OFFICE