



THE EMPLOYMENT TRIBUNAL

Claimant: Miss L. Klimaite

Respondent: GFK Retail & Technology UK Limited

JUDGMENT

The Claimant's application dated 15 June 2022 for reconsideration of the Judgment sent to the parties on 21 May 2022 is refused.

REASONS

1. On 4 June 2022, the Claimant wrote to the Tribunal requesting an extension of time in which to make an application for reconsideration of the Employment Tribunal's Reserved Judgment and Reasons, sent to the parties on 21 May 2022. I granted an extension of time for seven days from the date on which my order was sent to the Claimant. The Claimant made a full application for reconsideration by email on 15 June 2022.
2. The Claimant's grounds for reconsideration can be summarised as follows:
 - a) there was an error in the Tribunal's application of the case of *Peninsula Business Services Ltd v Sweeney*, because, unlike in *Sweeney*, the Claimant's contract itself did not say that expenses would only be reimbursed whilst in employment, but merely "following production of relevant receipts";
 - b) the Respondent had not accepted the Claimant's receipts when she wanted to submit them on 22 May 2018 (prior to the termination of her employment), instead requiring her to use an online system which did not work (which the Claimant says was in itself a breach of contract on the Respondent's part)/on which she was not set up until after the termination of her employment on 12 June 2018;
 - c) the Respondent's decision to reimburse the Claimant only six months' expenses was based on incorrect information, namely that the Claimant had received her expenses up to the end of 2017; in support of this, the Claimant relies on *Grogan v Robin Meredith Plant Hire*;
 - d) the Respondent had made errors in payroll and taxation in January 2014, which made the Claimant anxious that her expenses could be taxed by mistake;

- e) the contract contained no date by which relevant receipts should be produced, and did not specify how they should be produced, but the Respondent imposed specific non-contractual requirements in this respect at the end of the Claimant's employment;
 - f) the Respondent knew how much was outstanding by way of expenses as the Claimant had provided timesheets;
 - g) the Claimant did not receive an envelope to send receipts back to the office from around 2015 onwards;
 - h) the expenses the Claimant incurred were "out of pocket" expenses, for which she was entitled to be reimbursed under her contract of employment as in *Shah v Cortel Telecom Ltd*.
3. In accordance with rules 72(1) and (3) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('the ET Rules'), I have carefully considered the Reserved Judgment and Reasons, the Claimant's submissions and the cases to which she refers, and I have concluded that there is no reasonable prospect of the original decision being varied or revoked in the interests of justice.
4. In the case of the arguments set out at paragraphs 2(d), (e), (f) and (h) above, the points put forward in support of reconsideration by the Claimant were canvassed at the final hearing and were taken into account in determining the claim. The Claimant did not rely on the case of *Shah v Cortel Telecom Ltd*, UKEAT/0252/18 at the hearing, but having reviewed that case, I do not consider that it has any relevance to the matters the Tribunal had to determine. In particular, *Shah* was a case where the EAT overturned the ET's decision that the claimant should be reimbursed for his mileage expenses, and remitted the issue to the ET for further consideration. It does not support the Claimant's argument that her travel/food expenses should be reimbursed.
5. I set out my brief reasons for concluding that the remaining points have no reasonable prospect of supporting a variation or revocation of the original decision below.
6. In relation to point 2(a), the Claimant has misunderstood the point of law from *Peninsula Business Services Ltd v Sweeney* on which the Tribunal relied. The case of *Sweeney* was decided against the claimant on several grounds, one of which was that his contract included a clause providing that he was only entitled to commission if he was still in Peninsula's employment at the end of the calendar month in which the commission became due. That point is not relevant to the present case, because, as the Claimant rightly says, there was no equivalent clause relating to her expenses in her contract. However, the EAT also held that, even if they were incorrect in finding that this clause formed part of Mr Sweeney's contract, his claim would have failed for another reason. His contract only entitled him to commission in cases where Peninsula had received at least 25% of the fee for his work from the client. The EAT held that Mr Sweeney could not make a claim in the Employment Tribunal for any commission where that condition had been met only after his employment had terminated, because his entitlement to the money would not be outstanding or arise on the termination of employment as required by article 3 of the Extension of Jurisdiction Order.

7. It was this point of law on which the Tribunal relied in reaching its conclusion that the same article 3 prevented the Claimant from making a contractual claim for her expenses in the Employment Tribunal. Put simply, the Claimant's contract did not entitle her to any repayment of expenses until she produced her receipts. The Claimant only did that after her employment ended. In such circumstances, the Extension of Jurisdiction Order, which is the statutory instrument setting out the limits of the Employment Tribunal's jurisdiction, says that the Tribunal has no jurisdiction to hear the Claimant's claim.
8. Point 2(b) was largely canvassed and dismissed at the final hearing and in the Reserved Judgment and Reasons, but for clarity I summarise the position here. The Claimant's claim was for expenses stretching back to June 2015. The Claimant accepted in her oral evidence that she had not submitted any receipts in respect of the period June 2015 to the end of her employment on 12 June 2018 before July 2018. Prior to January 2018, the Claimant could have submitted those receipts by post, without using the electronic system, but she took no steps to do so. The Claimant was informed of the setting up of the electronic system in August 2017, but delayed her registration. She took no steps to enquire about the system until 22 May 2018, almost six weeks after she had been given notice of the forthcoming termination of her employment and the need to claim outstanding expenses via the portal (on 13 April 2018). Having been sent login details for the portal, and a bank details form to complete her registration on the same day she made her enquiry (22 May), the Claimant did not provide her bank details until 6 June 2018, six days before her employment terminated. The Tribunal found as a fact that the Claimant had not attempted to submit her receipts to the Respondent until 14 June 2018, when she asked whether she could submit her receipts by post rather than via the online system. These points are all contained in the Reserved Judgment and Reasons and the Claimant's application demonstrates no basis for varying or revoking the Tribunal's findings. The Claimant did not argue at the hearing that there was any breach of contract by the Respondent in relation to the online system, and such an argument would have no reasonable prospect of success.
9. In relation to point 2(c), the Respondent's decision to reimburse the Claimant for only six months' expenses was a discretionary one, not dictated by any contractual obligation. The Tribunal has found that it has no jurisdiction to consider a claim of breach of contract in respect of the Claimant's expenses for the reasons given at paragraphs 6 – 7 above, and alternatively, that there was no obligation on the Respondent to reimburse the Claimant in respect of expenses incurred prior to April 2018 (see paragraphs 88 – 90 of the Reserved Judgment and Reasons). The case of *Grogan* is not relevant as the Tribunal's Judgment was not based on a finding that there was any agreed variation of the Claimant's contract. There is therefore no reasonable prospect of the Judgment being varied or revoked on this basis.
10. Finally, in relation to point 2(g), whether or not the Claimant received envelopes to send her receipts back to the office from 2015 onwards is not a relevant consideration. The Claimant's contract said, and she knew, that she had to provide her receipts in order to receive her lunch allowance and travel expenses. There was nothing in the Claimant's contract to say that these could only be sent back using the employer's pre-paid envelopes. This was not, to my recollection, a point raised by the Claimant during the hearing and so it should not be considered at this point, but in any case, it would have no reasonable prospect of prompting a variation or revocation of the Tribunal's decision.

11. For these reasons, I dismiss the Claimant's application for reconsideration under rule 72(1) of the ET Rules 2013.

Employment Judge Beale

Date: 20 June 2022