



EMPLOYMENT TRIBUNALS

Claimant: Mr S Freeman

Respondent: Staffordshire Leisure Group Ltd

JUDGMENT

The respondent's application dated **17 March 2022** for reconsideration of the judgment sent to the parties on **6 January 2022** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because :

1 On 4 March 2022 the respondent's first application to reconsider the judgment sent to the parties on 6 January 2022 (the first application') was refused and the original judgment was confirmed ('the Reconsideration Judgment').

2 That judgment had been taken without sight of the respondent's written representations attached to an email dated 28 February 2022 which had been sent to the wrong email address.

3 The respondent's email of 28 February 2022 said that I had granted a reconsideration of the original judgment .I had not. I had expressed the opinion in the email of 24 January 2022 that the first application should proceed. It went on to say that the respondent was disappointed that it had not been granted a 'full re-hearing'. A full re-hearing would be arranged only in the event that the original judgment was revoked. The respondent failed to reply when given the opportunity on 7 February 2022 to express its view about whether the first application could be determined without a hearing.

4 On 17 March 2022 the respondent made a second application for reconsideration and asked that its written representations be accepted and considered. It also said that due to a covid related absence and the tribunal not actioning its email it was granted only a written representation. The tribunal therefore sought clarification of the respondent's position by ordering the respondent to provide the email referred to which made the tribunal aware of the covid related absence (if not its email of 24 December 2021 in which it had said it was unable to attend the hearing on 4 January 2022) and information about who had covid ,when they had it together with any medical evidence and an explanation why no-one else could attend the hearing.

5 The respondent replied on 21 September 2022 citing holiday absence for the delay but did not respond to the order made, referring only to its email of 24 December 2021.

6 I have considered the respondent's written representations. Had I had them before me when deciding the Reconsideration Judgment ,they would not have changed my decision.

7 The respondent does not deny it was the claimant's employer. The written representations state that the respondent relies on the terms of the 'Employee Handbook' .and explains in paragraphs 23 and 26 that the claimant's final pay was withheld because he had refused to work a notice period of two weeks. It relies on a clause in the Employee Handbook under which 'the Company, (which is not defined in the Employee Handbook) therefore ,reserves the right to withhold your final pay and/or any owed holiday pay if you do not complete your required notice period.' However ,the Employee Handbook (before me at the hearing on 4 January 2022 says it sets out terms and conditions of employment with Staffordshire and Cheshire Leisure Group ,not the respondent. The response served and the written representations do not explain why it says that it (a different legal entity) is entitled to rely on that clause in making a deduction from the claimant's wages .

8 Further there was nothing in the response or the written representations about why £ 651.85 (the deduction made by the respondent) is a genuine pre-estimate of the loss it would suffer if the claimant did not complete his notice period. The claimant was on a zero hours contract and was under no obligation to accept any shifts offered to him during any notice period. The clause appears to be penal in nature and not contractually enforceable.

9 Finally as far as the respondent's non-attendance at the hearing on 4 January 2022 is concerned ,no evidence or information has been provided that would lead me to change the conclusions in paragraph 10 of the Reconsideration Judgment .

Employment Judge Woffenden

Date: 06 October 2022