



EMPLOYMENT TRIBUNALS

Claimant: Mr A Di Angelo

Respondent: Reed Smith LLP

RECONSIDERATION JUDGMENT

The tribunal's Judgment dated 20 July 2021 and sent to the parties on 22 July 2021 is varied as follows:

The respondent made a deduction from the claimant's wages by underpaying statutory sick pay. The respondent has now rectified the under payment.

The respondent is ordered to pay the sum of £152.08 to the claimant as compensation for financial loss caused to the claimant due to the late payment by the respondent of statutory sick pay.

RECONSIDERATION REASONS

Background

1. A preliminary hearing was listed for 20 July 2021 to consider the claimant's unlawful deduction from wages claim and whether to impose a deposit order in respect of his victimisation claim.
2. The claimant had previously indicated that he was unable to attend on that date but, despite that, the hearing was listed on that date. A postponement request was made by the claimant on the grounds that there was an EAT appeal pending and this was refused. Although the claimant stated that he had medical appointments on 20 July 2021, he did not provide any evidence of these until after the hearing.
3. After considering the matter and taking into account the evidence and information before me, I took the decision to proceed with the hearing. I invited the claimant to request a reconsideration if there were any representations he wished to be taken into account which were not before me due to his non-attendance.

4. By email dated 5 August 2021, the claimant requested a reconsideration on a number of grounds which I will deal with in turn. I find that it would be in the interests of justice and in according with the overriding objective to determine the reconsideration request without a hearing.

Should the hearing have gone ahead?

5. The first issue for me to determine is whether the hearing should have gone ahead. I am satisfied that the decision to proceed was appropriate in the circumstances. There have been numerous delays in the progress of this case and the issues for the hearing were known to the parties in advance. The hearing had been listed since 2 July. The claimant had not provided any evidence to explain why he could not attend and, given that he was aware he would not be attending, he had an opportunity to make any representations prior to the hearing for me to consider.
6. I took into account the possibility that the claimant would not attend a reconvened hearing although I did not assume that would necessarily be the case.

Was important evidence not considered?

7. The decision to postpone the original listed hearing on 7 July 2021 was not taken by me and does not form part of this reconsideration judgment.
8. It is clearly preferable for both parties to participate in hearings but if one party is not able to attend, it can be possible to consider that party's representations and reach a decision in their absence. In my judgment I emphasised that the claimant had the opportunity to request a reconsideration of my Judgment and to put forward any representations he would have made if he had attended the hearing.
9. It is not clear from the claimant's reconsideration request what evidence he wanted me to consider which was not before me at the hearing. He suggests that the scope of the wages claim is wider than I assumed but he has not explained what aspect of the claim I failed to consider.
10. In his Schedule of Loss, the claimant sets out his claim for failure to pay sick pay. I reviewed the dates he claimed for and took into account the counter schedule prepared by the respondent which explains which sickness absence days are waiting days when no SSP is payable and which sickness absence days were isolated days, not within a 'period of incapacity for work', and therefore no SSP was payable. The counter schedule was dated 28 June 2021 but I did not receive any representations in response from the claimant to challenge the respondent's position, either prior to the hearing or in the reconsideration request.

11. The claimant's schedule of loss appears to claim that the respondent should have paid the claimant his normal pay rather than SSP for periods of absence by way of a reasonable adjustment due to his disability. This is not a pleaded claim and I am unable to deal with it. If the claimant wishes to extend his claim to include this, he will have to seek an amendment to his claim and will have to address the time limitation issue.
12. The evidence of his medical appointments is noted but was not before me at the hearing.

Failure to consider the disability claims

13. Under Rule 38(1) of the Tribunal Rules of Procedure, where an unless order is not complied with, that part of the claim or response is dismissed (struck out). I have no discretion in the matter. At the time of the hearing, the disability claims had been dismissed and were not an issue before me. Any matters arising from the Unless Order are for EJ Goodman to consider.

Wages Act claim

14. The claimant has explained and provided evidence to support his claim for loss of Universal Credit payments due to the late payment of SSP. I accept his explanation and calculate that the respondent should pay him £152.08 to recompense him for the loss of Universal Credit payments he suffered as a result of receiving SSP payments in arrears. If the SSP payments had been made at the correct time, he would not have suffered the loss in Universal Credit payments. I therefore award the claimant £152.08.

Employment Judge Davidson

Date 27 September 2021

JUDGMENT SENT TO THE PARTIES ON

27/09/2021

FOR EMPLOYMENT TRIBUNALS