



EMPLOYMENT TRIBUNALS

Claimant: Ms M Lucy-Dundas
Respondent: ODT Professional Services Limited

DECISION UPON RECONSIDERATION

Background

1. The Claimant made a further application for reconsideration on 15 September 2022.

Decision

2. The application has no reasonable prospect of success. I refuse it pursuant to rule 72(1).
3. The analysis at paragraph 10 (a) of the application of 15 September 2022 of the tribunal's principal judgment and its reconsideration decision does not accurately reflect the tribunal's reasoning in respect of *Polkey* at all. The tribunal's *Polkey* reasoning has, I believe, been carefully explained twice now. I do not think any further explanation is required or would be helpful.
4. The analysis at paragraph 10 (b) gives a partial and incomplete impression of the tribunal's reasoning in respect of contributory conduct. It ends with a quotation that stated in isolation is misleading. We have been at pains to say several times that the tribunal took a different view to the Respondent as to the equity release matter but that the Respondent's view was reasonably open to it. The tribunal's own primary assessment of the facts is what matters when assessing contribution. However, the position is different when it comes to *Polkey*.
5. The conclusion stated a paragraph 11 and the subsequent analysis is wrong since the premises upon which it is based are wrong.
6. I agree that the tribunal made two deductions, one for contributory conduct the other for *Polkey*. For reasons I have already explained I do not accept that there was any double-counting of the same thing.

7. I agree that the tribunal did not refer to the case of *King v Eaton (no 2)* [1998] IRLR 681 but there was simply no need to do so:
- (1) The tribunal referred to both *Software 2000 -v- Andrews* [2007] IRLR 568 and *Scope -v- Thornett* [2007] IRLR 155. These are both leading, guideline cases that themselves consider *King v Eaton* and give guidance on how to approach *Polkey* in light of *King* and many other authorities.
 - (2) Neither party referred to *King v Eaton*; both were professionally represented. *King v Eaton* is an extremely well known, old case and there is no reason why it could not have been referred to at the time.
 - (3) The tribunal was well aware that there were some circumstances in which it was not possible to make a *Polkey* reduction because of uncertainties. It did not consider this to be such a case.
 - (4) Nothing the tribunal has decided contradicts *King v Eaton*.
8. I remain of the view that the tribunal directed itself correctly in law, asked the right questions and answered them in a permissible way.

Employment Judge Dyal

Date 22.09.2022