



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112057/2021 & 4112399/2021

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Reconsideration Hearing Held in Chambers by CVP on 5 December 2022

**Employment Judge - A Strain
Members - I Ashraf and S Singh**

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Mr Martin Doyle

**Claimant
Written Representations**

DHL Services Limited

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**Respondent
Written Representations**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. the Claimant's application for reconsideration is refused and the Tribunal's original Judgment is confirmed.

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REASONS

Background

1. The case came before the Tribunal on the Claimant's application of 19 August 2022 for reconsideration of the Tribunal's Judgment of 10 August 2022 sent to the Parties on 17 August 2022.
2. The Respondent had lodged opposition to the application for reconsideration by email of 15 September 2022. Both Parties had been asked for written submissions in advance of the in chambers hearing.

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3. The Claimant had sent additional emails of 27 and 29 September and 20 November 2022 in support of his application. The Respondent did not submit anything in addition to the original email opposing the reconsideration.

Claimant's reconsideration application

- 5 4. The Claimant applied for reconsideration of the Judgment on the basis that "*The Judge was unfairly biased towards the other party.*"
5. The Claimant asserts that this was evidenced by the Judge dismissing the fact that his bundle was wrong and eventually relenting and adjourning; the Claimant having difficulty hearing due to the noise of the air conditioning in the hearing room and being unable to participate for long periods of time as a consequence and the Judge being uninterested in this issue; the Judge exhibiting bias towards counsel for the Respondent by calling him a "seasoned campaigner"; the Judge let counsel for the Respondent ask the tribunal members if he could help with any parts of the law and then responding to questions from the panel which the Judge should not have allowed; the Judge warning the Claimant for asking Gordon Fraser if there were issues regarding his management; and being warned for calling Kenneth Reid a "bigot". The Claimant asserted that he had not been given a fair
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20 *Respondent's opposition to reconsideration*

6. The Respondent opposed the application for reconsideration on the basis that the question of bias was not a matter that ought properly to be considered at a reconsideration hearing. The matters raised by the Claimant did not provide any evidence of bias or any other improper conduct on the part of the Judge.
- 25 In so far as the Claimant's hearing was concerned the Respondent submitted that at no time did the Claimant state he could not hear what was being said. The Claimant was vocal in the hearing, participated throughout and the structure of his questions showed he heard and understood the evidence.

Additional information from the Claimant

7. By emails of 27 and 29 September 2022 the Claimant supplemented his application for reconsideration in the following terms: *"I would further add. That the Respondent QC, was allowed to question myself when I was re seated and near the conclusion of the case, after nearly 2 hours of questions in the witness seat , he was again allowed to put more questions, asking if I did nightshift, repeating are you sure you Don't do nightshift. This went on for 5 minutes. Why this was allowed I don't know, I wouldn't have been allowed to re call witness and re question, the whole hearing was biased towards the Respondent. I also disagree that the judge can say something never happened, regarding my case ie sectarian abuse I received, he the judge can say he didn 't believe it, but to say it never happened is a fallacy, and another clear example of the biased behaviour towards the Respondent Qc. (seasoned campaigner) as the judge referred to Mr Grant Hutchison. And why the judge called him this does he know Mr Grant Hutchison only from employment Tribunals, also I asked for the Respondent to be struck out for not complying with the order for time sheets, I was told on first day of hearing the Judge had read my email , but he never did, also Gordon fraser was contradicted regarding hours worked ,saying only 16 hours available yet Ray Jeffrey's said I was offei&d niGie, and a ccontracl, if my hours were 16 with DHL how can I then be forced to work nightshift on 40 hours, lastly I was extremely concerned about my address being given to Kenneth Reid, and was extremely upset after seeing him the judge showed little interest in my well being ,and also refused my request to remove my address from document which had it on it, hopefully I have complied with rule 92 ,if not in the interests of Justice and seeing as the Respondent received the email , I would ask for it to be submitted into evidence, as I will need this for the future. "*
8. By email of 20 November 2022 the Claimant provided additional information as follows: *"I have recently found out that what Gordon Fraser testified under oath about paying myself an hourly rate for mileage is illegal, I would ask judge Strain to report this to the inland revenue, also I stand by my comments*

that DHL stole money from myself and destroyed the sign in sheets to cover there tracks regarding the hours I worked and drove sometimes driving for 70 hours a week, an accurate record should have been kept, I still find it totally unbelievable what has been said about me regarding the descion and the what the Respondent has said, I refuse to accept what has been said about me by the Respondent solicitors. And stand by evidence I gave under oath as the truth."

Decision and Reasons

9. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out the Rules of Procedure in Schedule 1, and those in relation to the reconsideration of judgments are at Rules 70 - 73. Those provisions are as follows:

"70 Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ('the original decision') maybe confirmed, varied or revoked. If it is revoked it may be taken again."

10. The Tribunal consider that allegations of bias are not appropriate for consideration in an application for reconsideration. Allegations of bias should be properly addressed to an appellate tribunal as a "point of law".

11. The circumstances advanced by the Claimant do not, in any event, suggest bias as claimed by him.

12. The Tribunal, on its own initiative, adjourned the first day of the hearing to enable the Claimant to get his bundle corrected.

13. The Tribunal checked with the Claimant that he could hear proceedings and the Claimant actively participated throughout.

14. The Respondent's counsel was an experienced advocate.

15. It is normal practice and procedure for the Tribunal to ask Parties representatives questions during submissions.
16. The issue of the time sheets was dealt with and the Respondent confirmed they had produced all that they had in compliance with the order.
- 5 17. The Claimant was prevented from asking irrelevant questions and from being disrespectful and abusive towards another witness.
18. If the Claimant considers matters should be raised with HMRC that is a matter for him.
19. The Claimant has not advanced anything which would lead the Tribunal to
io consider it necessary in the interests of justice to reconsider its Judgment.

Employment Judge: A Strain
Date of Judgment: 5 December 2022
Entered in register: 14 December 2022
and copied to parties

