



EMPLOYMENT TRIBUNALS

Claimant

Mr J Schumacher

Respondent

v Victuals Trading Limited t/a Brooks

JUDGMENT

Under Rule 71(1) and (3) of the Employment Tribunal Rules of Procedure 2013

The respondent's application dated 14 December 2022 for reconsideration of the judgment and reasons sent to the parties on 12 December 2022 is refused.

REASONS

1. The respondent has applied for reconsideration of the Judgment and Reasons given at the hearing on 4 November 2022 and sent to the parties in writing on 12 December 2022.
2. By rules 70-73 of the Employment Tribunals Rules of Procedure 2013, parties may apply for reconsideration of judgments made by a tribunal. The sole ground upon which a judgment may be reconsidered is that it is necessary in the interests of justice to reconsider it.
3. Rule 71 provides that an application must be sent within 14 days of the date on which the decision was sent to the parties. The application must be in writing and must set out why reconsideration of the original decision is necessary.
4. By rule 72(1), the application to have a decision reviewed shall be considered, where practicable, by the employment judge who made the decision, or who chaired the tribunal which made the decision. The judge shall refuse the application if he considers that there is no reasonable prospect of the decision being varied or revoked.
5. In Mr Frith's application on behalf of the respondent, he requests a reconsideration of the tribunal's decision on the basis that he now seeks to rely on handwritten work rotas that he says show the number of hours the claimant actually worked to be 50 rather than 51.
6. Copies of these rotas are attached to his email of 14 December 2022 requesting reconsideration. In essence this additional documentation he has sent to the tribunal is said to be further evidence that he would like the tribunal to consider. I am satisfied that it is not appropriate for the tribunal

to consider this further documentation nor does it provide grounds for reconsideration of the tribunal's decision in the 'interests of justice' (r70 of the Employment Tribunal Rules 2013) for the following reasons.

7. It is apparent from the nature of this material that this was evidence that was available or could have been available for use at the hearing on 4 November 2022. This cannot be said to amount to new evidence that could not have been reasonably known about or foreseen at the time of the final Hearing.
8. As referenced in the letter from the tribunal to the parties attaching the Judgment and Reasons (dated 12 December 2022) the dispute of fact over the claim for 51 hours rather than 50 was canvassed with Mr Frith at the hearing. On behalf of the respondent Mr Frith agreed to accept liability for 51 hours and conceded that part of the claim. Furthermore, it is the responsibility of the parties to ensure all available evidence upon which they intend to rely is produced at the hearing. In any event, Mr Frith did not seek a postponement of the Hearing to enable him to produce the material he now seeks to rely upon and instead chose to concede the point. It would not be in the interests of justice to allow Mr Frith to resile from that position retrospectively.
9. The tribunal reached its unanimous findings of fact and Judgment on the basis and in the light of all the evidence presented at the Hearing. Having carefully considered the respondent's application for reconsideration I am satisfied that it is no more than an attempt by the respondent to re-litigate, without proper cause, an entirely reliable decision that happens not to be of Mr Frith's liking.
10. The fact that the decision went against the respondent and that Mr Frith was unsuccessful in persuading the tribunal that the respondent had not made unauthorized deductions to the claimant's wages in breach of Part II of the Employment Rights Act 1996 or that any unauthorized deduction was limited to the equivalent of 50 rather than 51 hours is no basis for the tribunal reconsidering its decision.
11. I have therefore, for the reasons given above, decided to reject this application for reconsideration. I do so because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Wyeth
Date: 28 April 2023
Judgment sent to the parties on
3.5.2023
For the Tribunal office GDJ