



EMPLOYMENT TRIBUNALS

Claimant: Ms R Borr
Respondent: NESHER Limited

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

The claimant's email of 14 February 2023 for reconsideration of the judgment in this case is refused. She was awarded the correct amount of compensation for her claim for a redundancy payment. However, this document does correct the calculation that was sent to Ms Borr.

REASONS

1. By email presented to the tribunal on 14 February 2023, Ms Borr applied for reconsideration of the judgment that was sent to her on or around 03 February 2023. Ms Borr's claim formed part of a multiple claim against the respondent. The judgment in question was handed down by way of a Rule 21 judgment, in circumstances where the respondent had not presented a valid response in time.
2. The claimant was awarded damages for breach of contract in respect of notice pay. She was awarded a redundancy payment. And she was awarded damages for unpaid holiday entitlement that had accrued at the point of her contract being terminated.
3. The claimant's application for reconsideration was only in relation to her redundancy payment. She considered that there had been a miscalculation and that the award had been calculated using 5 years continuous service rather than 6 years continuous service.
4. The position with respect reconsideration of judgments is contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.
5. Under Rule 72 of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge

considers that there is no reasonable prospect of the original decision being varied or revoked. Where the application is not refused, the application may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted, the judge will give the parties a reasonable opportunity to make further written representations.

6. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA**:
 - a. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
 - b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
 - c. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
7. I have carefully considered the matters that have been raised in the email of 14 February 2023. This has led me to considering the calculation of Ms Borr's redundancy payment afresh, to ensure that there has not been an error. Having reviewed Ms Borr's claim and having considered the judgment handed down on or around 03 February 2023, I conclude that although there was an error in the calculation that was recorded on the judgment, the figure awarded to her was correct. I therefore use this reconsideration judgment to set out the accurate calculation of Ms Borr's redundancy payment.
8. Ms Borr's date of birth is 03 September 1996.
9. Ms Borr's employment with the respondent ended on 02 September 2022. At that date, she was 25 years old.
10. Ms Borr completed 6 full years' continuous service.
11. Ms Borr's gross and net pay was the same, at £161.50 per week.
12. Section 162 of the Employment Rights Act 1996 sets out the statutory calculation for redundancy payments. Section 162(2) states that the appropriate amount means:
 - a. one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
 - b. one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
 - c. half a week's pay for each year of employment not within paragraph (a) or (b).
13. The claimant was aged above 22 for 3 full years of her employment with the respondent (unfortunately, she was one day short of this being 4 full years, being dismissed the day before her 26th birthday). This therefore attracts 3 x 1 weeks' pay (this falling within s.162(2)(b) of the Employment Rights Act 1996). For this period she is awarded 3 x 1 x £161.50 (which is £484.50).

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14. The remaining 3 complete years that Ms Borr worked for the respondent falls within s.162(2)(c) of the Employment Rights Act 1996. This therefore attracts 3 x 0.5 weeks' pay. For this period she is awarded 3 x 0.5 x £161.50 (which is £242.25).
15. Ms Borr was therefore entitled to a redundancy payment, applying the statutory formula, of £726.75 (that being £484.50 + £242.25).
16. I therefore confirm that the figure awarded to Ms Borr is correct. However, this document stands as a correction to the calculation.
17. There is therefore no reasonable prospect of the original decision being varied or revoked.
18. The application for reconsideration is therefore refused.

Employment Judge **M Butler**

Date__19 May 2023__

JUDGMENT SENT TO THE PARTIES ON

30 May 2023

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