



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss V Coakley

v

CF Support Services

Heard at: **Bury St Edmunds**

On: **29 March 2023**

Before: **Employment Judge Laidler**

Members: **Mr M Brewis**
Mrs S Lawrence – Doig

Appearance:

For the Claimant: **In Person**

For the Respondent: **Ms J Henderson, Director**

JUDGMENT having been sent to the parties on 30 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is the claimant's application for reconsideration of the remedy judgment sent to the parties on 28 November 2022 following a remedy hearing on 16

November 2022. The tribunal had found automatically unfair dismissal and detrimental treatment for having raised protected disclosures.

2. A reserved judgement and reasons were sent to the parties on 23 September 2022 following the liability hearing on the 23 to 27 May 2022. At the same time case management orders were made for the remedy hearing. These included the claimant filing an up-to-date schedule of loss with copies of all the documents she sought to rely on in support if not already contained in the bundle. The original bundle did contain details of jobs applied for from pages 274 to 310 as the respondent's then solicitor had asked for that disclosure from the claimant.
3. The tribunal's decision at the remedy hearing was that it had no evidence of jobs applied for after 5 November 2021 until the end of April beginning of May 2022. It therefore limited the losses it could award to those incurred up to 5 November 2021 being 41 weeks.
4. In her application for reconsideration the claimant stated that when she had explained to the tribunal at the remedy hearing that the lack of evidence of roles applied for during that period was because her focus had been on preparing for the liability hearing, she said that because 'I had on evidence based answer at that time'. She continued in her application for reconsideration:

'However, I had made applications and attended an interview during the months it was believed I hadn't albeit there were fewer than any other time. Some of the evidence for this was available at the remedy hearing in the original bundle but had been misdate ordered by the respondent's solicitor and counsel she had representing her at the remedy hearing.

Prior to the liability hearing...the respondent had requested all mitigation evidence up until that point. However, 2021 applications and 2022 applications have been confused as just 2021'.
5. With the application the claimant provided 21 pages of new evidence.
6. The claimant first referred to the application to Caudwell Children at p 298 of the original bundle. That was a screenshot acknowledging the application but with no date on it. The claimant now produced a screenshot of her Inbox showing an application to Caudwell Children of the 22 March 2022.
7. The next role referred to in this application was that at page 299 of the original bundle. This acknowledged receipt of an application for a post of Behaviour Support Practitioner at Voyage for which the claimant was not shortlisted. The claimant explained at this hearing that Voyage is ATS and this appears on page 3 of her new documents and was March 2022. In fact it states '22 Mar' and not the year.
8. The claimant also stated in her application that new page 5 showed a role applied for in January 2022 to Grove Social Care but that page does not show

a date. The claimant stated that she found the email in a list of emails for that time period but no documentary evidence has been produced.

9. The claimant did produce evidence of a job applied for at Benjamin Britten Music Academy in December 2021 for which she was interviewed in February 2022. She stated in the application for reconsideration that she had obtained this information from the school as she was unable to retrieve the email and documentation.
10. The claimant accepted at this Hearing that in relation to those last two documents they were not in the original bundle. She further explained in relation to the Benjamin Britten role that she had contacted them immediately after the remedy hearing and obtained a copy of her application. The claimant accepted that she might not now be able to rely on those documents as they were not in the original bundle. When asked why there was a lack of documentation the claimant explained that in the car on way home on the 16 November after the remedy hearing she was deleting emails. Then on reflection asked Benjamin Britten Music Academy for a copy of her application the next day and when she got it she filed her reconsideration application.

RELEVANT LAW

11. Employment Tribunal Rules 2013

Principles

70. 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”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.— (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties

on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

12. The 2013 Rules of Procedure provide that the tribunal must consider whether it is in the interests of justice to grant a reconsideration and in doing so it must take into account the overriding objective. The earlier 2004 Rules specifically dealt with the situation of evidence that was not available to the tribunal at the time it made its judgment. The case of Ladd v Marshall [1954] 3 All ER 745 CA, still sets out the relevant principles to be applied to justify the acceptance of fresh evidence. It is necessary to show: –
 1. that the evidence could not have been obtained with reasonable diligence for use at the original hearing.
 2. that the evidence is relevant and would probably have had an important influence on the hearing and
 3. that the evidence is apparently credible.

Conclusions

13. The application for reconsideration is refused. There is still a gap from November to March when the tribunal has no evidence of jobs being applied for. The documentary evidence now provided of an application in January 2022 and the Benjamin Britten Music Academy role was evidence that the claimant could have provided for the original liability bundle and certainly in time for the

remedy hearing. There must be finality in litigation. The claimant has taken the findings of the remedy hearing and tried to rectify deficiencies in her evidence. That could have been done in time for the remedy hearing and is not the role of a reconsideration application.

Employer's Pension contributions

14. The tribunal of its own volition has concluded that the amount of £1112.80 that it ordered the respondent to pay in respect of loss of employers pension contributions should not have been included in the prescribed element to which the Recoupment Provisions apply as it was not in the strict sense wages. A revised judgment will be issued confirming that.
15. In her application the claimant takes issue with the amount sought to be recouped. That is not a matter over which this tribunal has any jurisdiction and consequently cannot be considered. Its original judgment will therefore remain save the sum of £1112.80 will be taken out of the prescribed element and is a sum the respondent must pay directly to the claimant. The respondent has for some reason paid that sum into a new NEST scheme in the claimant's name. That is again not something that this tribunal can deal with and is a matter for the respondent to resolve as the claimant is unable to gain access to that money.

Employment Judge Laidler

Date: 4 July 2023

Reasons sent to the parties on:

5 July 2023

For the Tribunal: