



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Lightfoot-Webber

First Respondent: Lawcommercial Trading Ltd t/a Lawcomm Solicitors

Second Respondent: Lawcommercial Services Limited

JUDGMENT

The Respondent's application dated **10 July 2023** for reconsideration of the Reserved Remedies Judgment dated 15 June 2023 and sent to the parties on 27 June 2023 is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Background

1. By a claim form presented on 10 September 2022 the Claimant claimed constructive unfair dismissal, made a claim for unlawful deduction from wages in relation to a bonus payment and a claim for a failure to provide a statement of terms of employment. The claim was heard on 21 and 22 February 2023. A remedies hearing took place on 5 June 2023.
2. In a reserved remedies judgement dated 15 June 2023, I determined that the First Respondent must make the following payments to the Claimant:
 - a. Basic award: £3,426;
 - b. Compensatory award: £1,228.61 (including an ACAS uplift of £111.69);
 - c. Failure to give employment particulars: £1,187.68; and
 - d. Breach of Contract: £7,035.75 (gross).
3. The First Respondent now applies for a reconsideration of that Judgment. The grounds are set out in the First Respondent's letter dated 10 July 2023. In summary, the grounds are that:
 - a. in relation to alleged breach of confidentiality obligations by the

- Claimant, the Respondent considers that there is very clear evidence of the same and applies for a 40% reduction in the Basic Award as a result;
- b. the First Respondent produces a newly discovered email, which it says proves that the Claimant breached contractual non-solicitation obligations and seeks a reduction to the Compensatory Award;
 - c. it objects to a breach of contract award being made on a gross basis since the First Respondent says it must make deductions for tax and insurance.

The Rules

- 4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
- 5. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
- 6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out 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.
- 7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:
 - "34. [...] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.*
 - 35. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."*
- 8. The First Respondent's application was received within the relevant time limit.

I therefore consider it under Rule 72.

Discussion

9. In relation to the alleged breach of confidentiality obligations, taken at its highest the Claimant said to Mr Roper and Tracey that *"the firm were being underhand by refusing to pay her, and also Mr Dhariwal had breached his promise to make her a Director"*. The Claimant was not cross examined on this. However, even if this allegation is true and having regard for the definition of blameworthy conduct set out in Nelson v BBC (No.2) 1980 ICR 110, and all of the circumstances of the case, this conduct is not the kind of behaviour envisaged by the term blameworthy and would not justify a reduction to the Basic Award.
10. The First Respondent appears, in the second ground, to be challenging the decision that there should be no reduction for contributory fault and Polkey. This was determined at paragraph 120 of the Liabilities Judgment. As such, it cannot be challenged in a reconsideration application in relation to the Remedies Judgment.
11. To the extent the second ground is said to relate to the Basic Award, the following applies. The First Respondent refers to alleged solicitation by the Claimant which the First Respondent says is clearly evidenced in an email dated 8 July 2022 to the relevant client in which she states *"in order to for your file to be transferred with me, you will need to sign a file release form, which I will send to you via Adobe sign."*. This email was not provided to the Tribunal in the Remedies Hearing, because the First Respondent says it has only just been discovered. However, as was made clear in paragraph 45 of the Reserved Remedies Judgment, only conduct predating the Claimant's resignation (9 June 2022) can be relevant to a reduction to the Basic Award pursuant to section 122(2) of the Employment Rights Act 1996. As the First Respondent states in its reconsideration application, it is still the case that *"It is not clear when the Claimant solicited this particular client"*, (as it was at the date of the Remedies Hearing). This new evidence relates to a date after 9 June 2022, and the position remains that this alleged conduct cannot be proven to have taken place before the Claimant's resignation. Therefore this new evidence does not change the position set out in paragraph 45 of the Reserved Remedies Judgment. The First Respondent also appears to ignore the fact that once there has been a fundamental breach of contract, which has been accepted by the other party, the party accepting the breach is no longer bound by the terms of the contract (including non-solicitation obligations).
12. In relation to the third ground, the First Respondent appears to have misunderstood an award being expressed as a gross amount and a requirement to pay a sum without deduction.

Conclusions

13. Having carefully considered the First Respondent's application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Volkmer
Date: 17 July 2023

Judgment sent to the Parties on 03 August 2023

For the Tribunal Office