



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113735/2021 & others as per multiple ref 4100138

Employment Judge M Kearns

Ms M Forteath & others as per attached schedule

Claimants
Represented by:
Mr P Kissen -
Solicitor

Forth Care Limited (in Liquidation)

Respondents
Not present and
Not represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Rules 70 – 72 of the Employment Tribunal Rules of Procedure 2013

The Judgment of the Employment Tribunal is that upon reconsideration in terms of rule 72, ground (b) of the reconsidered Judgment dated 16 August 2022 (“the Judgment”) is varied as follows:

- (1) On page 1 of the Judgment, by inserting in line 5 of ground (b), after the words: “*were all made redundant on 1 September 2021*” and before the words: “*and orders the respondent*”, the following words: “*apart from Mary Forteath, Grace Rae, Andrew Donald and Balwinder Kaur Singh whose dates of dismissal by reason of redundancy were 28 August 2021, 31 August 2021, 29 August 2021 and 1 August 2021 respectively*”; and
- (2) By substituting the word: “*August*” for “*September*” in line 7 of ground (b);

so that ground (b) on page 1 of the Judgment now reads as follows:

“(b) The Employment Tribunal declares well founded the claimants’ complaint that the respondent has failed to comply with its obligations under Sections 188A and 188 of the Trade Union & Labour Relations (Consolidation) Act 1992. The Employment Tribunal makes a protective award under Section 189 of that Act in favour of the respondent’s employees who were all made redundant on 1 September 2021 *apart from Mary Forteath, Grace Rae, Andrew Donald and Balwinder Kaur Singh whose dates of dismissal by reason of redundancy were 28 August 2021, 31 August 2021, 29 August 2021 and 1 August 2021 respectively* and orders the respondent to pay appropriate remuneration to the claimants for the protected period namely for 90 days starting on 1 August 2021.”

REASONS

1. By email dated 11 May 2023 the claimants’ solicitor - Mr Kissen - made an application under rules 70 – 71 of the Employment Tribunal Rules of Procedure 2013 for reconsideration of the reconsidered Judgment of the Employment Tribunal dated 16 August 2022.
2. Rule 71 provides that:

“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.”
3. The application was received by the Tribunal outside the 14 days required by Rule 71. The reasons for the delay put forward on behalf of the claimants were as follows: The application for reconsideration is necessary because of a discrepancy that has emerged concerning the dismissal dates of four of the claimants covered by the Judgment of 16 August 2022. The discrepancy regarding dates of dismissal

was not known at the time the claim was lodged. Mr Kissen submitted that it was not until 20 February 2023 that the Redundancy Payments Service (“RPS”) informed the claimants’ representative that there were discrepancies as to the dates of dismissal.

4. In his email of 11 May 2023, Mr Kissen detailed the steps taken by the parties to try and resolve the matter. However, a resolution did not prove possible. Having considered Mr Kissen’s submissions and in the absence of any comments from the respondent, I concluded that it was in accordance with the over-riding objective to extend time under Rule 5, and the application for reconsideration was not refused under Rule 72(1). A response was invited by 2 June 2023 but none was received.
5. At the hearing by Cloud Video Platform on 22 August 2023, Mr Kissen submitted that the application for reconsideration of the Judgment was necessary because a discrepancy had emerged regarding the dates of dismissal of four of the claimants and it had not been possible to resolve the issue by agreement between the parties.
6. Mr Kissen produced a copy of the email from the RPS to himself, dated 20 February 2023 in which the RPS stated:

“2. *Employment termination dates provided by Insolvency Practitioner (IP) and claimants differ to Tribunal award*

M Forteath - Claimant and IP confirm employment termination date - 28/8/2021 and not 1/9/2021 as per Tribunal award

G Rae - Claimant and IP confirm employment termination date - 31/8/2021 and not 1/9/2021 as per Tribunal award

A Donald - Claimant and IP confirm employment termination date - 29/8/2021 and not 1/9/2021 as per Tribunal award

B Kaur Singh - Claimant and IP confirm employment termination date - 1/8/2021 and not 1/9/2021 as per Tribunal award”

7. Mr Kissen requested that the Judgment dated 16 August 2022 be varied to show the correct dates of dismissal of the four claimants named in the RPS email. He submitted that it was in the interests of justice for the Judgment to be reconsidered as it would address a purely administrative discrepancy and enable the claimants to receive the remuneration to which they are entitled. I accepted this submission and have varied the Judgment accordingly.

8. As Mr Kissen submitted, the variation requested would also affect the date of the start of the protected period. S189(4) TULRCA provides that:

“The protected period—

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect...”

9. He submitted - and I accept - that as the first of the dismissals is now known to be that of Balwinder Kaur Singh whose dismissal for redundancy took effect on 1 August 2021, the protected period must therefore also begin on that date. It is, in my view, in the interests of justice to vary the month in line 7 paragraph (b) of the Judgment from “September” to “August” so that the Judgment now correctly .

Employment Judge: M Kearns
Date of Judgment: 23 August 2023
Entered in register: 28 August 2023
and copied to parties

Multiple Schedule

Multiple: 4100138 - Forth Care Ltd

<u>Case Number</u>	<u>Case Name</u>
4113735/2021	Mary Forteath -v- Forth Care Ltd
4113736/2021	Ms Agrineth Gugu Nkosi -v- Forth Care Ltd
4113737/2021	Ms Mary Forteath -v- Forth Care Ltd
4113738/2021	Ms Grace Rae -v- Forth Care Ltd
4113739/2021	Ms Anne Mcilroy -v- Forth Care Ltd
4113740/2021	Mr Darren Martin -v- Forth Care Ltd
4113741/2021	Mr Andrew Donald -v- Forth Care Ltd
4113742/2021	Mr Balwinder Kaur Singh -v- Forth Care Ltd