EMPLOYMENT TRIBUNALS

Claimant: **Mr Z Farooqi**

Respondent: **East London Bus & Coach Company Limited**

Heard at: **East London Hearing Centre**

On: **21 July 2023**

Before: **Employment Judge Gardiner**

Member: **Mrs G Forrest**

Representation

Claimant: In person (assisted by Mr Raza, friend)
Respondent: Mrs Grace Holden, counsel

Following a hearing on 21 July 2023, the Tribunal gave oral reasons for refusing the Respondent's reconsideration application. The Claimant has requested that those reasons be set out in writing.

REASONS FOR REFUSING RECONSIDERATION

1. On 9 September 2022, the Tribunal issued its Remedy Judgment. The Respondent now applies for a reconsideration of three aspects of that Remedy Judgment. In short it challenges the tribunal's calculation of the rate of occupational sick pay and the number of additional days of statutory sick pay to which the Claimant was entitled. There is also a clarification of the number of days of holiday entitlement as at 30 June 2022.

2. By consent, this reconsideration hearing took place before a panel of only two. Due to a breakdown in communication, one panel member had not attended.

3. In support of the reconsideration application a bundle of documents was prepared. This included correspondence with the Tribunal since the date of the Remedy Hearing on 30 June 2022. We were also handed a three-page document detailing sick pay rates. That document was not before the Tribunal at the Remedy Hearing.

4. In order to put in new evidence at a Reconsideration Hearing, the party relying on the new evidence must satisfy the well-known requirements set out in *Ladd v Marshall* [1954] 1 WLR 1489. The first of these is that the new evidence could not have been obtained with reasonable diligence for use at the original hearing. There is nothing before us indicating that these pages could not have been before the tribunal at the Remedy Hearing. They plainly could. Even if for some reason they could not have been included in the Remedy Hearing bundle, they could have been provided to the Tribunal whilst it was deliberating and before it issued its Judgment. During that period the Respondent submitted two emails intended to clarify the computation of the pay and sick pay to which the Claimant was entitled; and to clarify his holiday entitlement. This was to assist the Tribunal with the figures to be inserted into the Tribunal's judgment as the appropriate financial remedy as a consequence of the Claimant's reinstatement. The Judgment was not issued until over two months after the Remedy Hearing.

5. We therefore do not admit this new evidence. The Respondent had a full opportunity to address the Tribunal as to the rate of pay that would be paid during sick leave. They had this opportunity at the hearing and then again in subsequent submissions. We therefore do not consider that the Respondent has satisfied the test for a reconsideration of the Judgment to show that it would be in the interests of justice to recalculate the figures for sick pay.

6. So far as the second issue is concerned, the Respondent is effectively advancing an argument that it was not making at the Remedy Hearing. That is, the Respondent is now arguing that occupational sick pay included SSP and therefore the number of days for which the Claimant should be reimbursed for SSP in addition to occupational sick pay should be reduced by 16 days from 103 days to 87 days. The Respondent could have made this point at the Remedy Hearing and again when addressing the Tribunal on 7 July 2013 in writing. Instead in that email it chose to refer to the number of days of SSP entitlement as 103 days in the paragraph after it had referred to 16 days of occupational sick pay. The Tribunal awarded the Claimant a figure that was consistent with the Respondent's own formulation of the Claimant's entitlement in that email of 7 July. Indeed, the Respondent's own paperwork, both at this Reconsideration Hearing and in the original Remedy Hearing bundle at pages 166 and 170 (which had been referred to by Mrs Hannan in her oral evidence) appeared to indicate that there were periods when the Claimant would be in receipt of both statutory sick pay and occupational sick pay. She did not make the distinction now being made that statutory sick pay was included in occupational sick pay. Therefore, we do not grant a reconsideration based on the argument that the Respondent is now advancing.

7. A fundamental principle of justice is that there is finality of judgments. Generally, it should not be open to one party to seek to reargue a dispute once a Judgment has been issued, save for very good reason. This is particularly so when the arguments advanced at the reconsideration hearing are arguments that could and should have been advanced before the Judgment was issued. The result here may be that the Claimant has been overcompensated compared to what he was entitled to receive. However there is no injustice to the Respondent. It is a large and well-resourced organisation. It could and should have advanced the points and the evidence it is now relying on at the time of the original Remedy Hearing or in advance of the Judgment.

8. We are very disappointed to learn that the Claimant has not been paid the sum that the Tribunal has awarded, but only a lower sum that the Respondent considers is due to him. It should not be for any party to take it upon themselves to vary the amount that a Court or Tribunal has ordered. In circumstances where Mr Farooqi remains an employee of the Respondent, there is a mechanism through payroll in which the Respondent could have sought reimbursement of any overpayment - in the event that the Judgment sum was subsequently lowered following a successful Reconsideration application. It may be that the Respondent now owes the Claimant statutory interest for its failure to pay the Claimant the appropriate judgment sum. We would expect a responsible employer to ensure that this sum is calculated appropriately and paid to the Claimant through the payroll system.

9. So far as the entitlement to days of holiday are concerned, the Tribunal is grateful to the Respondent for seeking to clarify the Claimant's holiday entitlement. We do not consider that there is any basis for amending our earlier Judgment based on this clarification. The Tribunal does not have a statutory power to declare the number of days of holiday to which a serving employee is currently entitled. The Tribunal did its best, based on the information provided to it at the time, to set out its understanding of the position in order to assist the parties to rebuild the working relationship. The Tribunal considers that an employee and an employer should be able to resolve these matters without involving the Tribunal. In any event we understand that the parties are effectively agreed on this issue and see no reason to vary our original Judgment.

Employment Judge Gardiner
Dated: 13 September 2023