



EMPLOYMENT TRIBUNALS

Claimant: Mr Adnan Sheikh

Respondent: Mitie Care and Custody Limited

JUDGMENT ON RECONSIDERATION

The claimant's application dated 23 July 2023 for reconsideration of the Judgment sent to the parties on 13 July 2023 is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked because the issues raised by the claimant in his reconsideration were dealt with at the liability hearing and in the judgment on quantum.

Rules of Procedure

1. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.

2. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to re-open matters heard and decided unless there are special circumstances such as a procedural mishap, depriving a party of a chance to put his case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The Application

3. By way of an email dated 23 July 2023 the Claimant made an application for the Tribunal to reconsider its decision in respect of the amount payable by the Respondent in respect of notice pay and outstanding holiday pay. The claimant

disagrees with the amount awarded both in terms of the amount payable for notice pay and in terms of the amount of holiday pay outstanding.

4. The Tribunal found that the Claimant's claims for unlawful deductions and holiday pay were out of time. However, the Respondent had conceded at the liability hearing on 9 December 2022 that it owed the Claimant 11 weeks' notice pay and 248 hours accrued but untaken holiday pay at the date of termination based upon his contractual hours of 21 hours per week. This concession was made by the Respondent and was not a determination of the Tribunal. However, having made the concession to the Tribunal during the hearing the amount of payment remained a live issue. The Claimant disputed the amount of a week's pay at the hearing and the Respondent was ordered to provide details of how it had calculated a weeks' pay in order to determine the amount payable in relation to the Claimant's 11 weeks' notice pay and accrued but untaken holiday pay amounting to 248 hours. The Respondent provided full calculations, with payslips in support of the figures, to the Tribunal and the Claimant on 19 December 2022. If the parties were unable to agree the figures between them the matter should be referred to me for further orders.

5. The Respondent calculations and payslips were provided to the Tribunal in support of its calculations and the Tribunal accepted that evidence. The claimant provided a "Schedule of Loss Part 1" in which he sought to reargue his claim for holiday pay beyond the 248 hours conceded by the Respondent and based his calculations for notice pay on full time earnings. The claimant accepted that his hours were 21 hours per week but appeared to argued that his notice pay should be based on overtime and other allowances but in his schedule calculated the payment on full time hours without any explanation other than he had been required to work overtime. The Claimant did not provide any further evidence including payslips at that time.

6. The Tribunal issued a judgment on 19 June 2023 and the Respondent was ordered to pay the Claimant £5,499.36 in respect of 11 weeks' notice pay and 248 hours holiday pay. The Tribunal accepted the Respondent's calculations when making this judgment.

7. I have reviewed the evidence presented at the hearing and the additional evidence provided by the Claimant now which is after the liability hearing and after failing to agree the amounts with the Respondent and find that the matters raised in the application have been fully dealt with and that the Claimant has not provided any additional further evidence that meet the criteria in Rule 70. The issues raised by the Claimant relate to his claim for holiday pay which is out of time and were considered at the substantive hearing and the calculation of a week's pay was determined by reference to evidence provided and the Claimant's agreement that he was contracted to work 21 hours per week and there is no contractual provision for overtime or any evidence as to why his notice pay should be calculated on a full time basis. The evidence provided by the Respondent was preferred by the Tribunal and the reconsideration request does not provide anything further for the Tribunal to determine which has not already been done so.

8. For all the above reasons the Claimant's application is refused.

Employment Judge Hill

Date: 18/09/2023

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