



EMPLOYMENT TRIBUNALS

Claimant: Mr D Witts

Respondents: Martindales Ltd

Before: Employment Judge Hastie

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application dated 9 November 2023 for reconsideration of the judgment dated 8 September 2023 is refused.

REASONS

1. A letter from the claimant dated 9 November 2023 was received by the Tribunal on 10 November 2023. The claimant seeks reconsideration of the judgment of 8 September 2023.
2. A reserved judgment and reasons was sent to the parties on 27 October 2023. The claimant's claims of unlawful deductions from wages were successful in relation to seven unlawful deductions. The claimant's claims of unlawful deductions in relation to a further five deductions were dismissed.

3. The claimant's application for reconsideration relates to two of the five items that were deducted from his wages namely a damaged wing mirror on a works van (£27.68) and a deduction for incorrectly measuring a window unit (£94.06).
4. Reconsideration applications are governed by the Employment Tribunal Rules of Procedure 2013 ("the Rules").
5. Under Rule 71 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. The application was therefore received within the relevant time limit.
6. Rule 71 requires that an application for reconsideration be copied to all other parties. The claimant's letter dated 9 November 2023 appears to have been received by the tribunal by post. It does not appear that the claimant copied his application to the respondent in accordance with rule 71. The tribunal has discretion to waive the requirement and has exercised its discretion to do so. It follows that the tribunal has jurisdiction to consider the reconsideration application.
7. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
8. The matters relied upon by the Claimant are summarised below:
 - a. *Evidence supplied by the respondent, to support their claim that deductions had been made due to my negligence, was not formally produced by either of their two witnesses. The documents were mostly hearsay from the witnesses' perspective, leaving it difficult for me to question their content. Although the HR Manager from*

Martindales was present, she was there in her capacity as a representative only, rather than as a witness I was able to question.

- b. *I would question why, if they were so concerned to take photos of the cleanliness of the van as alleged evidence of my negligence, would they not also have taken a photo of the broken wing mirror at the same time if it was found to be damaged? Their evidence is therefore more consistent with the damage having occurred on the return journey.*

- c. *The document (Sec 3 Page 21) was redacted to the extent that I was unable to identify which survey it was. Without thereby being able to recall exactly what I had measured I could only refer during the Tribunal to a potential issue with the surveying app, which had occurred in the past. Again, the document was not provided by a witness so there was no-one available to question about its content during the Tribunal. However, on re-examining this outside of the question of redactions, which were my focus during the Tribunal. I see that it does not actually show evidence of a mismeasure. The document clearly relates to a survey, one which I have undertaken. This fact I have never questioned. It also shows that glass was ordered according to the measurements I provided, and that it is the cost of that glass which was deducted from my wages. However, there is nothing in this document to show what the alleged error in measurement was, or any other supporting documents, such as an invoice for replacement glass which would have thereby been required. It is simply their word that this was a mismeasure, with no valid supporting evidence provided.*

- 9. The hearing was the claimant's opportunity to give information, ask questions and raise issues, which he did. The claimant had the opportunity

to ask questions of all witnesses and advance all relevant arguments. The claimant was successful in relation to seven of his claims for unlawful deductions from his wages.

The matters relied upon by the claimant

- a. The claimant had a full opportunity to make this point during the hearing and to ask the respondent about any issues in relation to the production of evidence. The time to do that was at the hearing on 8 September 2023.
 - b. The claimant had a full opportunity to make submissions about this point. Even if the person who took the relevant photographs was not present, the claimant could have asked the other witnesses and made submissions to support this point. The time to do that was at the hearing on 8 September 2023.
 - c. The claimant had the opportunity to consider the papers ahead of the hearing and make requests for documents to be supplied in a clearer or unredacted format if he considered that relevant to his claims. The claimant did not do this.
10. The Tribunal gave all the issues full consideration and prepared its decision and reasons in detail. The claimant seeks to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings.
11. The application is an attempt to re-litigate what was explored in detail at the hearing. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The claimant's application does not identify any new

- matters. The photographs of the wing mirror and the interior of the van were in evidence at the hearing. The document regarding the mismeasured window unit was also in evidence at the hearing. The claimant does not put forward an adequate explanation for why the matters put forward in the reconsideration application were not raised at the hearing.
12. It is not the purpose of reconsideration to allow a party to dispute a determination that the party disagrees with, and it is a fundamental requirement of litigation that there is certainty and finality.
13. I have kept in mind the decision in **Outsight v VB Brown 2015 ICR D 11**. In this case it was confirmed that Employment Tribunals have, under Rule 70, a broad discretion in determination of reconsideration applications. It was stated that discretion must be exercised judicially: “which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”.
14. Reconsideration cannot be ordered simply because a party disagrees with the Judgment. Further guidance was provided by the President of the Employment Appeal Tribunal in **Liddington v 2gether NHS Foundation Trust UKEAT/0002/16/DA**,

“a request for reconsideration is not an opportunity for a party to seek to relitigate 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 is 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.”

15. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Hastie
Dated 4 December 2023

Reasons sent to Parties on 03 January 2024

For the Tribunal Office