



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Chambers
Respondent: Smile Foster Care Limited
Heard at: In chambers
On: 14 December 2023
Before: Employment Judge Smith (sitting alone)

Representation

Claimant: Not required to attend
Respondent: Nor required to attend

JUDGMENT ON RECONSIDERATION

The Claimant's application for reconsideration dated 11 September 2023 is refused.

REASONS

1. The Claimant's email of 11 September 2023 was only referred to me on 16 November 2023. I regret and therefore apologise to the parties that it has taken until this time to determine the Claimant's application for reconsideration.
2. The Claimant did not copy the Respondent into her email of 11 September 2023 despite the requirement for her to do so under **rule 71** of the **Employment Tribunal Rules**. However, as I have determined that the application discloses no grounds which present a reasonable prospect of my decision on remedy being varied or revoked, it has not been necessary to take representations from the Respondent.

3. In her reconsideration application the Claimant contends that I made an error in my remedy judgment when recording, for the purposes of the recoupment provisions in relation to state benefits, that the “prescribed period” was 14 February 2022 to 8 August 2023 (paragraph 3(2)). She contends that I should have recorded the second of those dates as 19 June 2022, the date by which I determined her loss of earnings had come to an end.
4. In my judgment, the Claimant’s contention is incorrect. Whilst I did indeed determine that the loss of earnings – for which she should be compensated in a compensatory award for unfair dismissal – ended on 19 June 2022 (when she got a new, better-paid job), that is not the period to which the recoupment provisions apply. As is made clear by the **paragraph 7** of the **schedule** to the **Employment Protection (Recoupment of Benefits) Regulations 1996**, the prescribed element of an award covered by the recoupment provisions ends at the point at which “*Any amount ordered to be paid and calculated under section 123 [Employment Rights Act 1996] in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings.*” **Regulation 2(3)** provides that the “*conclusion of the tribunal proceedings*” means the date I announced the decision to the parties (**reg.2(3)(a)**) or the date the decision was sent to the parties (**reg.2(3)(b)**).
5. My judgment on remedy – which included the order for payment and the required information relating to recoupment – was announced orally at the remedy hearing of 8 August 2023 with both parties in attendance and is therefore the date at which the “prescribed period” for recoupment purposes comes to an end. The fact that the written judgment was not sent to the parties until 1 September 2023 is immaterial. The issue is not, in reality, a matter of judicial discretion at all but one conclusively determined by the plain wording of the **Regulations**.
6. The Claimant’s contention that the end date should instead be 19 June 2022 is unsupported by authority and in my judgment, wrong. For these reasons I consider that the Claimant’s application for reconsideration discloses no reasonable prospect of my original decision being varied or revoked and I therefore refuse it under **rule 71**.
- 7.

Employment Judge Smith

Date: 14 December 2023

JUDGMENT SENT TO THE PARTIES ON

....31 January 2024.....

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FOR THE TRIBUNAL OFFICE

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