



EMPLOYMENT TRIBUNALS

Claimant: Mr J Biddulph
Respondent: Eastern Counties Leather (In Partnership)

Before: Employment Judge Hindmarch

RECONSIDERATION JUDGMENT

The Claimant's application for reconsideration of the Judgment under Rule 71 is refused.

REASONS

1. The Judgment was dated 3 November 2023 and sent to the parties on 6 November 2023. On 16 November 2023 the Claimant emailed the Tribunal asking for reconsideration stating "the Tribunal has made a mistake in the way my final salary and holiday pay benefits have been calculated and deducted from the £10,000 amount". He set out his own calculations.
2. I asked for the Respondent's comments on the application and these were received by the Tribunal on 5 December 2023. They were written by Counsel for the Respondent, Mr Griffiths, and I thank him for his assistance.
3. I apologise to the parties for the delay in writing this Reconsideration Judgment.
4. On the final day of the liability hearing I invited submissions from both parties in relation to the mathematical calculations as to final pay and holiday pay and I set these out in my Judgment. The Claimant did not argue at the time with the Respondent's position on the calculation of the monies involved.
5. The Claimant in his application for reconsideration now says the following:

- a. that the Tribunal mistakenly calculated his last month's salary as being £1278.84;
- b. that the Tribunal failed to take account of deductions for tax, national insurance, pension and student loan contributions;
- c. that the holiday pay claim was wrongly mixed up with the last month's salary calculation; and
- d. the sum of £4195.00, rather than £2255.80, should have been deducted from the Respondent's counter-claimed sum.

Law

6. Rules 70-73 of the Employment Tribunal Rules of Procedure 2013 make provision for the reconsideration of Judgments and provides as follows:

"70. A tribunal may... on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (" the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again".
7. Under Rule 71 a party may apply in writing for reconsideration, such application to be made within 14 days of receipt of the original decision.
8. Rule "72 (1) provides an Employment Judge shall consider any application made under Rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked ... the application shall be refused and the Tribunal shall inform the parties of the refusal".

Conclusions

9. The Judgment at paragraph 52 makes it clear the figure of £1278.84 was not recorded as the Claimant's last month's salary, but rather was recorded as the Claimant's own calculation of his holiday pay owed. His first challenge to the Judgment must therefore fail as it would not be in the interests of justice to revoke or vary something that is correctly stated. Indeed the Judgment at paragraph 41 makes it clear the figures for gross and monthly pay are different to the figure for holiday pay. The third challenge must fail for the same reasons.
10. On the other two grounds of challenge, in short the Claimant appears to be contending that the Respondent should have given him credit for gross pay received in the last month of employment and, in addition, the Tribunal should have given him credit for a larger sum as set off against the Respondent's counterclaim.
11. The Respondent as employer is required to make necessary deduction to gross salary and holiday pay and does so before paying net salary to

the Claimant as employee. The Claimant would have only received his net pay such that it was the net pay only that was set off against the Respondent's counterclaim. It is not in the interests of justice to revoke or vary the use of net figures.

12. The Claimant's contention that £4195.00 is the correct set off sum is based on his mistaken assumptions about the figures used for salary and holiday pay and as referred to in the paragraphs above. It is not in the interests of justice to vary or revoke this.

13. I have reconsidered and confirm my original decision.

Employment Judge **Hindmarch**
13 May 2024