



EMPLOYMENT TRIBUNALS

Considered at: London South

On: 13 May 2024

By: Employment Judge Ramsden

In the matter of (1) Mr D McShaw, (2) Mr R McShaw, (3) Mr E Atwere v Mitie Limited

Consideration of reserved judgment reached on 25 April 2024

JUDGMENT ON RECONSIDERATION

1. The Claimants' application for reconsideration of the judgment dismissing certain of their claims of unauthorised deductions from their wages given in this matter on **25 April 2024** is refused.

BACKGROUND

2. The First Claimant filed two Claim Forms commencing the proceedings in these cases, the first on 4 March 2021, and the second (which made complaints on his own behalf and on behalf of the Second and Third Claimants) on 22 April 2021.
3. The relevant complaints for the purposes of the application for reconsideration are:
 - a) The complaint *from the First Claimant* that the Respondent made unauthorised deductions from his wages on the basis that he was contractually guaranteed work on the first weekend of every month, which the Respondent failed to honour (**Complaint 1**);
 - b) The complaint *from the Second Claimant* that the Respondent made unauthorised deductions from his wages on the basis that pay relating to the first hour on the first weekend of every month has been deducted from his pay from 4 April 2020 to date (**Complaint 5**); and
 - c) The complaint *from each of the Claimants* that the Respondent made unauthorised deductions from each of their wages on the basis that they

were contractually entitled to cover each other's holiday leave (**Complaints 4, 9 and 12**).

APPLICATIONS

4. The Claimants applied, under Rule 71 of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**), for reconsideration of my decision on 25 April 2024 that Complaints 1, 4, 5, 9 and 12 were not made out and were dismissed.
5. The Claimants' reason for applying for reconsideration of that decision is that I made it clear that I would not look at the multitude of evidence provided, and that it was therefore unreasonable for me to conclude that insufficient evidence was provided, in respect of these Complaints, to establish that the Claimant had a contractual entitlement to:
 - a) In the case of Complaint 1 and the First Claimant, work on the first weekend of every month;
 - b) In the case of Complaint 5 and the Second Claimant, work an extra hour on the first weekend of every month; and
 - c) In the case of Complaints 4, 9 and 12 and each of the Claimants, cover each other's holiday leave.

RULES

6. The Rules on reconsideration are set out in Rules 70 to 73 of the ET Rules. The pertinent ones for these purposes are Rules 70 and 72:

"70 Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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."

"72 Process

(1) 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties seeking the views of the

parties on whether the application can be determined without a hearing, The notice may set out the Judge's provisional views on the application...

REASONS

7. At a Preliminary Hearing for Case Management held on 18 January 2024 Employment Judge G Cawthray:
"explained very clearly and at length that the Tribunal will not have time to read 100s, let alone 1,000s of documents and that the parties needed to take a very sensible approach in relation to what documents it specifically required the Tribunal to read."
8. At the Final Hearing on this matter, held over three days on 22 to 24 April 2024, I made it clear to both parties that I would read the documents I was taken to, by being referred to them in the witness statements, in the course of witness evidence, or in submissions.
9. I asked the parties at the outset to identify the key documents I should be read before witness evidence commenced, and I read each of those documents.
10. While the Claimants' witness statements did not do this, I asked each Claimant to take me to the relevant pages of the Bundles that they considered demonstrated the disputed contractual entitlements, and I recorded those page numbers in my notes. I then took a careful look at those documents in the course of the hearing, overnight in the two evenings between the hearing, and when I reserved my decision and was assessing the merits of the parties' arguments before composing the judgment that was issued on 25 April 2024.
11. When the Second Claimant made closing submissions on behalf of all of the Claimants he referred to *"a multitude of examples over the years"* that supported their contentions in relation to Complaints 1 and 5, and I interrupted the Second Claimant to ask for the page references of the documents he was relying upon for this assertion - those are some of the pages numbers recorded in the judgment, with the others being those pointed to at different times in the course of the hearing by the Claimants.
12. Whilst the Claimants were reminded of the need for us to use the time allocated to the hearing appropriately, there was no limitation placed on the number of documents that the Claimants could take me to, and I looked at each page reference they gave me to consider whether they established, in respect of each of the disputed contractual terms, the custom and practice the Claimants said operated.
13. In making submissions on behalf of the Claimants (after a short pause following the Respondent's submissions so the Claimants could confer and gather thoughts) the Second Claimant referred to different pages at different times in

those submissions, and each page reference was reviewed by the Employment Judge carefully after reserving her decision.

14. After the Second Claimant finished his submissions, a short period of time was given for him to consult with the other two Claimants to see if they wished to add to the submissions the Second Claimant made (a process that I had anticipated the previous day and discussed with the parties). The Respondent objected to the length of time given for the Claimants to make submissions given it had worked to the half-hour time frame I had indicated. I allowed the Claimants more time than the Respondent, both as they were litigants-in-person and as they were three people coordinating joint submissions.
15. In summary, the Claimants had ample opportunity to take me to all the pages in the voluminous bundles of evidence that they wished to rely on – indeed, I specifically asked them to point me to all the evidence in the Bundles on which they wished to rely. When they did so, those documents failed to establish the customs and practices they claimed.

DECISION

16. For the reasons set out above, the Claimants' application for reconsideration is refused – they have no reasonable prospect of the original decision being varied or revoked.

Employment Judge Ramsden
Date: 13 May 2024