



EMPLOYMENT TRIBUNALS

Claimant: Mr Kevin Moore

Respondent: Parcel Power Logistics Limited

JUDGMENT ON RECONSIDERATION

The claimant's application dated 18 August 2024 for reconsideration of the Judgment sent to the parties on 05 September 2024 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 request
 - a. were dealt with at the final hearing and subsequent evidence provided by the Claimant could have been provided at that hearing and in the view of the Tribunal does not make any material difference to the outcome and is essentially repeat of the evidence heard at the hearing.
 - b. The Tribunal was required to determine what the principal reason for the dismissal and found that the principal reason was the alleged antisemitic comment

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 18 August 2024 the Claimant made an application for the Tribunal to reconsider its decision in respect of whether he was dismissed for asserting at Statutory Right. The Claimant application essentially seeks to rehear the evidence provided to the Tribunal and the Claimant disagrees with the Tribunal's findings in that he considers the evidence he provided to the Tribunal should carry more weight than that of the Respondent.

4. The claimant has raised in summary the following issues:

- a. That he was told he was not entitled to holiday pay
- b. The original reason of redundancy was found to be untrue and therefore lacks credibility
- c. The Respondent did not make any payments between the date of dismissal and the hearing and proves they refused to pay him
- d. No evidence was provided to back up their version of events
- e. Gross misconduct was not referred to until exchange of witness statements
- f. Mr White agreed with the Claimant that it was wrong not to have paid him holiday pay after his dismissal.
- g. The Respondent was not consistent during the hearing
- h. There is a time difference between Poland and the UK which disproves the timing of events.
- i. The Respondent failed to follow tribunal procedures
- j. In summary the Claimant states: To summarise, the unbiased evidence that has been provided by myself should bear the most weight and show that it is more probable that these events occurred rather than the respondent's totally unfounded and changed version of events that has only been attempted to be proven by one witness statement and that was from an employee of the company so naturally this is biased information. I have also evidenced that these events could not have occurred and as a result could not have been the reason for my dismissal. I do not see any substantial evidence that can make the respondent's version of events more probable to have occurred than mine especially given the overwhelming evidence I have submitted.

5. The Tribunal issued a judgment on 05 September 2024 and the Tribunal concluded that

- a. My role is to determine the principal reason for the dismissal. In this case, I have found that the principal reason was the perceived anti-Semitic comment made by the Claimant and the perceived aggressive tone. The Claimant argued that the dismissal was due to asserting a statutory right, specifically related to his holiday pay. However, considering the evidence and looking at the text messages between the parties, the Respondent had agreed to grant the holiday and to make payment. I accept that the Respondent had not made the payment at the time of dismissal and the Claimant was upset by the Respondent's lack of urgency over dealing with the issue. However, this is not a case where the Claimant ask for holiday and was refused or asked to be paid and was refused and then dismissed because he wanted to take holiday and be paid. Instead, the Claimant was pursuing the late payment of the agreed holiday pay, not disputing the entitlement to it. I am satisfied that the Respondent's view of the Claimant changed during the evening of 19th December after Mr. Randall's conversation with Mr. White. This change of view and believing him to have made antisemitic comments is in the Tribunal's view the principal reason for ending the claimant's employment. I accepted Mr. White's evidence and whilst the Respondent had no documentary evidence, indeed the original reason was a downturn in work, I am satisfied that Mr. White gave honest unbiased evidence to this Tribunal that he informed Mr Randall on 19th December of his conversation with the Claimant. The timing of events fits with this evidence and there was no evidence to support the Claimant's view that the reason for dismissal was the fact that he was chasing a late payment because Mr. Randall and Mr. April were engaging in those text exchanges. Whilst after the dismissal there may have been discussions by phone or text where the Respondent indicated they may not pay the amount due, I must make a determination of what was in the mind of the Respondent at the point of dismissal.
- b. Furthermore, even if the issue of holiday pay was a factor in the Respondent's decision-making process, I have concluded based on the evidence before me that the principal reason for the dismissal was the alleged misconduct. The tribunal considered the evidence and found that the alleged anti-Semitic comment along with the perceived aggressive tone was the primary reason for the dismissal, rather than any assertion of a statutory right. Therefore, the dismissal was not automatically unfair under Section 104 of the Employment rights Act 1996.

6. In particular the Tribunal found that the Respondent believed that the Claimant had made what was considered was a racist comment about the Jewish holidays and that coupled with what was considered the Claimant's increasing aggressive tone over the holiday pay issue was the reason for his dismissal. Mr. Randall's evidence was that he did not want a confrontation, which is why he stated the reason in the WhatsApp messages was due to a downturn in work. The Tribunal accepted this evidence because it was clear that an intervening event had occurred during the messages exchanges between the parties and it match with the evidence of Mr White

who was no longer an employee of the Respondent and the Tribunal considered his evidence unbiased and reliable.

7. I have reviewed the evidence presented at the hearing and the additional evidence/comments provided by the Claimant. I have also considered the comments provided by the Respondent and find that the matters raised in the application have been fully dealt with at the hearing or are not material to my decision and that the Claimant has not provided any additional further evidence that meet the criteria in Rule 70. The role of the Tribunal in this case was to determine the principal reason for dismissal, there may be more than one reason, but I determined based on the evidence before me at the tribunal that the principal reason was not related to asserting a statutory right.

8. The issues raised by the Claimant relate to him not accepting the findings of the Tribunal and not referring to any error of law or producing new evidence that could not have been produced at the hearing. Having considered the points raised by the Claimant I am satisfied that the points raised are not sufficient for me to reconsider my decision.

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

Employment Judge Hill

Date: 06/11/2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 19 November 2024

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