Case Number: 3301767/2023

EMPLOYMENT TRIBUNALS

Claimant: Mr M Islam

Respondent: BMW UK Manufacturing Ltd

Heard at: Cambridge Tribunal (by video)
On: 28, 29 and 30 October (with parties) & 12 November 2024 (chambers)

Before: Judge Dobbie, sitting with Members Ms K Omer and Mr John Williams

Representation
Claimant: In person
Respondent: Mr J McKeown (Counsel)

JUDGMENT

1. The Claimant's two applications dated 16 and 17 January 2025 respectively for reconsideration of the judgment sent to the parties on 13 January 2025 are refused.

REASONS

2. There is no reasonable prospect of the original decision being varied or revoked, because (taking the Claimant's points in turn)[1]:

3. The tribunal made a finding of fact that the nature of the meeting on 10 November 2022 was in fact a meeting under the Respondent's Attendance Improvement Procedure (AIP), which is part of the collective agreement. It was therefore held not to be a meeting under the disciplinary procedure, which is a separate part of the collective agreement. It was held that the reference to a disciplinary meeting in the invite letter was an error (§132). This was based on the Respondent's evidence.

[1] Both applications, sent one day apart, are similar though not identical and I have considered both.

4. At page [292] of the bundle, the AIP policy stated that *'associates returning from a period of absence are to be interviewed <u>within the first shift of their returning to work</u>.'* (emphasis add). Page [292] also sets out a grid of four stages to the AIP process, starting with a 'recorded discussion' and escalating to a 'final review'. The first stage of the AIP that can lead to a 'recorded discussion' sets a 13-week review period and appears to be akin to an informal discussion, not a disciplinary-type stage.

5. Page [113] of the bundle states *'Associates… will be notified in writing of AIP and Disciplinary hearings at least 2 days prior to the hearing'.* However the tribunal understood that this only applies to AIP meetings that could lead to disciplinary-type sanctions, i.e. those AIP outcomes specified under the second to fourth stages of the AIP i.e. a First Improvement Letter; Second Improvement Letter; or Final Review. If it were otherwise, there would be no scope for the 'interview within the first shift back' to apply and there would therefore be two contradictory periods of time in which the meeting under the AIP should be held.

6. Further, it would be most peculiar for the first stage of the AIP (first meeting after reaching 200 points which could lead to a 'recorded discussion') fell within the remit of the disciplinary policy, it is not disciplinary in nature or in its potential outcome. There is no risk of a 'warning' or sanction. Therefore, for the stage of the AIP that the Claimant was invited to, we held there was not a two-day minimum notice requirement under the policies. This is consistent with the quote provided by the Claimant from page 445 where his own representative stated in the meeting:

   '200 point, they are counselling letters and they are the lowest form and it is your manager speaking to you about counselling your absence <u>and it isn't as much as a discipline</u>, it is a counselling but the letter says aboyut [sic] disciplinary. So I think the letter needs to be amended. People see a letter and it makes the alarm bells go, we know the difference, you get a disciplinary all evidence in advance but counselling you get it in the meeting. When you get into that meeting the first thing you ask is RTW…'
   [emphasis added]

7. This recognizes that the meeting was a counselling meeting and that there was an error in the letter which needed amending.

8. In any event, at §138, of the Reasons, the Tribunal held that:

   'We find that a day's notice was short in the circumstances and that in addition to the other ways in which the process was deficient, this could have been a matter which formed part of a series of matters leading to a final straw for a breach of trust and confidence. However, on its own, it was not significant enough to amount to such a breach.'

9. At §152 of the Reasons, the tribunal recorded:

   'We have taken a step back to consider whether the matters we have found to be culpable (though not discrimination or harassment) could give rise individually or

cumulatively to a breach of the implied term of trust and confidence. We find that even when aggregated, the matters are not serious enough to breach the implied term of trust and confidence.'

10. Therefore, the tribunal did consider that the notice of the meeting was inadequate but nonetheless held that it was not enough to amount to a fundamental breach (individually or in aggregation with other matters). As such, even if the Claimant had been correct in his reading of the policies, it would not have made any difference to the outcome of the constructive unfair dismissal claim. Similarly, in respect of the race claims predicated on this aspect, due to the finding at §135 of the Reasons (that there was no evidence to link the notice period to race) the outcome of the claim would not have been any different even if the Claimant's interpretation of the policies was correct.

11. As to the suggestion that the Claimant could not have called 'Donald union rep' as a witness because he 'is still working for BMW UK MANUFACTURING LTD so I was not able to get a witness statement of him' this is not correct. The Claimant could of course have contacted him to request he attend as a witness for him. If he refused to attend, the Claimant could have asked for a witness order, or raised it during the hearing so that the matter could have been considered. Further and in any event, the Claimant has not specified what evidence he says this witness could have given and how it might have changed any of the findings. As such, there is no basis for reconsidering the decision on this ground.

12. As to the assertion that 'Mr Mohammed did not investigate the grievance fairly', this issue was canvassed during the hearing, evidence was heard from both sides and the documents were considered. The tribunal held at §§149-151 of its Reasons that the grievance process was reasonable and fair. The Claimant has not advanced any basis as to why that that factual determination should be altered.

13. Finally, the Claimant asserts that none of his evidence was taken into consideration and that the decision was taken 'on the submission of the respondent'. It is plain from the judgment that the Claimant's evidence was taken into account and the tribunal did discuss and weigh up the evidence where there was a dispute of fact. Part of the tribunal's job is to decide disputed facts and when it does so, preferring one party's case to that of the other, there will always be one party disappointed. However, there is nothing to suggest that the findings are incorrect on the evidence presented by the parties and there is no basis for reconsideration.

Approved by:

Employment Judge Dobbie

Date: 17 March 2025

JUDGMENT SENT TO THE PARTIES ON
21 March 2025

FOR THE TRIBUNAL OFFICE