



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr F L Quigley

**Respondent:** Sweethart Ltd

**UPON APPLICATION** made by the respondent by letter dated 4 December 2024

**AND UPON APPLICATION** made by the claimant by email dated 7 April 2025

under rule 69 of the Employment Tribunal Procedure Rules 2024, and without a hearing.

## JUDGMENT

### **The respondent's application for reconsideration**

1. The respondent's application dated 4 December 2024 for reconsideration of the judgment dated 27 August 2024 is allowed.

### **The claimant's application for reconsideration**

2. The claimant's application dated 7 April 2025 for reconsideration of the judgment dated 27 August 2024 is refused.

## REASONS

### **The claimant's application**

1. The claimant has set out in his correspondence of 7 April 2024 that he does not want the judgment to be reconsidered. That statement was made in response to correspondence from the Tribunal seeking the claimant's views on the respondent's application for reconsideration of the judgment.
2. The claimant's email then goes on to make a request that the Tribunal reconsiders a different aspect of the judgment of 27 August 2024. I am therefore treating the claimant's correspondence of 7 April 2024 both as a response to the respondent's application for reconsideration of the judgment and also as his own application for reconsideration.
3. The claimant's application for a reconsideration of the judgment is refused

because it has been made more than 14 days after the judgment was sent to the parties and the claimant has not given any explanation for the delay.

4. Even if the application for reconsideration had been made within 14 days of the judgment being sent to the parties or the claimant had provided a satisfactory reason for the delay in making the application I would still have refused the application for reconsideration. This is because the information provided by the claimant about why he thinks that his holiday pay entitlement has been incorrectly calculated is information that was available and considered by me at the hearing when I calculated the claimant's holiday entitlement as part of his holiday pay claim. Having reviewed the information and my calculations I am satisfied that the conclusion that I reached in relation to the claimant's holiday pay claim was correct. Accordingly, there is no realistic prospect of the original decision being varied or revoked.

### **The respondent's application**

5. The respondent made an application in writing on 4 December 2024 for reconsideration of the judgment dated 27 August 2024.
6. The respondent's application for reconsideration has been made more than 14 days after the judgment was sent to the parties and the respondent has not provided an explanation for the delay. However, I decided that it was in the interests of justice to extend time for making the application because my preliminary view, when I received the application, was that the respondent correctly identified an error of law in the judgment.
7. The basis of the respondent's application is that an award of compensation for failure to provide a written statement of particulars of employment can only be made if the Tribunal finds in favour of the claimant in relation to proceedings specified in schedule 5, Employment Act 2002. The respondent says that as the Tribunal did not find in favour of the claimant in relation to any proceedings specified in schedule 5, Employment Act 2002 that the Tribunal did not have jurisdiction to make the award to the claimant failure to provide a written statement of particulars of employment.
8. Applications for a reconsideration of a Tribunal judgment is an exception to the principle that a decision of the Employment Tribunal is final, save for appeals on a point of law. The test when dealing with an application for a reconsideration is contained within Rule 68 Employment Tribunal Rules of Procedure 2024 which provides:

#### *"Principles*

*68.—(1) The 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.*

*(2) A judgment under reconsideration may be confirmed, varied or revoked.*

*(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the*

*same conclusion.”*

9. The Court of Appeal in ***Ministry of Justice v Burton and anor [2016] EWCA Civ 714*** observed (paragraph 21) that the discretion to act in the interests of justice is not open ended and should be exercised in a principled way, and it emphasised the importance of finality of proceedings.
10. The claimant's claims for unauthorised deductions from wages and holiday pay were dismissed. The only element of the claimant's claim that was successful was the claim for failure to provide a written statement of employment particulars.
11. The right to receive a written statement of particulars of employment is set out in section 1, Employment Rights Act 1996.
12. In section 35, Employment Act 2002 it is set out that if the Tribunal finds in favour of the claimant in relation to any proceedings listed in schedule 5, Employment Act 2002 the Tribunal must make either the minimum award (two weeks' pay) or higher award (four weeks' pay) to the claimant.
13. The list of proceedings in schedule 5, Employment Act 2002 includes unauthorised deductions from wages and holiday pay.
14. The Tribunal does not have jurisdiction to make an award to the claimant for the respondent's failure to provide a written statement of particulars of employment other than in accordance with section 35, Employment Act 2002.
15. If the claimant had been successful in either of his claims for unauthorised deductions from wages or his holiday pay claim then the judgment in relation to the respondent's failure to provide a written statement of employment particulars would have been properly made. Because both of the claimant's claims were dismissed the Tribunal had no jurisdiction to make the award for failure to provide a written statement of employment particulars. Accordingly, that judgment must be revoked.
16. Paragraphs 3 and 4 of the judgment of 27 August 2024 are therefore revoked and the claim for failure to provide a written statement of employment particulars is dismissed.
17. The claimant is not entitled to any payment from the respondent in respect of his claims.

Date 28 May 2025

Approved by

Employment Judge Heather