

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL

CASE REF: 2103/20IT

CLAIMANT: Steven Barrow

RESPONDENT: Terry Coyle t/a Icon Restaurant & Winebar

Reconsideration Judgment

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Browne (sitting alone)

JUDGMENT:

1. The Employment Judge has considered the application of the respondent made under rule 66 of The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020. He has concluded that the application provides no reasonable prospect of the original decision being varied or revoked. The application is therefore dismissed in its entirety.

THE RELEVANT LEGISLATION

2. The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations are contained in Schedule 1 to the Regulations:

“Reconsideration of judgment

64. *A tribunal may, either on its own initiative or on the application of a party, reconsider any judgment (“the original decision”) where it is necessary in the interests of justice to do so.*

Reconsideration on tribunal’s own initiative

65. *Where the tribunal proposes to reconsider the original decision on its own initiative—*

(a) it shall inform the parties of the reasons why the decision is being reconsidered; and

(b) the original decision shall be reconsidered in accordance with rule 67(2) (as if an application had been made and not refused).

Application for reconsideration

66. *Except where it is made at a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) —*

- (a) within 14 days of the date on which the original decision was sent to the parties; or*
- (b) within 14 days of the date that the written reasons were sent (if later), and shall set out why reconsideration of the original decision is necessary in the interests of justice.*

Consideration of the application

67. — *(1) An employment judge shall consider any application made under rule 66. If the employment 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 parties shall be informed of the refusal.”*

ISSUES RAISED AND CONCLUSIONS

3. The respondent made a number of assertions in his application for reconsideration of the original judgment. These, broadly stated, were that he had produced sufficient evidence to cast doubt upon the truth of the claimant’s case that the respondent had failed to pay him his salary and holiday pay.
4. The Tribunal in reaching its decision concluded that the respondent had failed to provide any witness evidence to establish the provenance of the written materials provided by him. He further appeared to expect the Tribunal to accept hearsay evidence from persons, named by him, contradictory to that of the claimant. There was no indication from him that he had taken any steps to secure the attendance of those persons, to provide evidence on his behalf.
5. The Tribunal further concluded that the respondent persistently failed (despite repeatedly being urged by the Tribunal), to ask the claimant relevant, focused questions, challenging his evidence. The respondent instead adopted the approach of angrily making unsubstantiated allegations against the claimant, including serious allegations of criminal damage to his computer system, which had not been reported to the police. Whilst the respondent apologised in his application for reconsideration for not asking more questions of the claimant, the Employment Judge is satisfied that the Tribunal made it very clear to both parties throughout the hearing that it was essential to do so, in order to establish their respective cases.
6. The Tribunal also concluded from the respondent’s conduct at the hearing that there was clear evidence of personal animosity between the respondent and the claimant, who is the son of the respondent’s erstwhile wife. The respondent brought cash to the hearing, equating to the amount sought by the claimant as unpaid wages, for which the respondent did not provide a satisfactory explanation as to why he had not offered payment in advance of the hearing.

7. The respondent in his application for reconsideration was critical of the Tribunal for not challenging the claimant's evidence. Whilst there is scope for the Tribunal to ask questions of witnesses, the Tribunal must remain neutral, and cannot be expected to conduct a party's case for them. Both parties were intelligent adults, with no personal impediments to prevent their being able to engage in the hearing. The respondent repeatedly was given every opportunity to establish his case.
8. The Tribunal concluded that the respondent's sloppy practices regarding the claimant's holiday records resulted in a situation where the absence of relevant, verified records presented a major obstacle to reaching a clear conclusion. The Tribunal therefore also had to weigh the credibility of the claimant and the respondent. The claimant was prepared to concede in evidence that some of his claim for holiday pay might not be accurate, and amended his claim downwards.
9. Whilst there was clear animosity between the parties, the Tribunal unanimously concluded that the claimant was the more credible witness of the two, whilst concluding that the respondent was not a credible witness. His entire approach to the claimant's case was found by the Tribunal to be more likely motivated by a deep-seated personal animosity to the claimant and to his mother, rather than being rooted in a reasoned and evidentially verifiable response.
10. The Tribunal therefore applied to its factual conclusions the test relevant to tribunal cases of the balance of probabilities, rather than that in criminal cases of beyond reasonable doubt, and unanimously concluded that the claimant had satisfied it that the respondent had failed to pay to him the wages and holiday pay forming the basis of his claim, as revised.
11. The Employment Judge therefore concluded that no element of the respondent's application for reconsideration was capable of providing a reasonable prospect of the original decision of the Tribunal being varied or revoked. He therefore concluded that the application must consequently be dismissed in its entirety.

Employment Judge:

Date and place of hearing: 22 January 2022, Belfast.

Issued: