



EMPLOYMENT TRIBUNALS

Claimant: Mr N Joyce

Respondent: Abbotsgate (Hull) Limited

JUDGMENT

The Claimant's applications dated 7 and 20 August 2018 for the Judgment of 6 August 2018 to be reconsidered are refused.

REASONS

1. Under Rule 71 of the Tribunal's Rules of Procedure, a party may apply for the Tribunal to reconsider a Judgment on the basis that it is necessary in the interests of justice for the Tribunal to do so. Under Rule 72(1), an Employment Judge must conduct a preliminary assessment of the application. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application must be refused.
2. The first application relates to the quantum of damages awarded for the Claimant's failure to take reasonable care for the Respondent's mobile 'phone. The Claimant effectively reasserts the argument he made at the Hearing that damages should be limited to the cost of purchasing a second hand 'phone of the same model over the internet. That argument was considered and rejected by the Tribunal, which preferred the Respondent's argument that damages should reflect the cost of a 'phone that was acceptable to a sales director, which in practice would mean buying a new 'phone. In any event, the evidence produced by the Claimant, namely screenshots of used 'phones of the same model for sale on ebay, would not have been sufficient to establish that a 'phone in equivalent condition to that lost by the Claimant could be purchased for no more than £35, since those screenshots gave no information on the condition of the 'phones on sale.
3. The Claimant's second application relates to the Tribunal's conclusion that he was not entitled to damages for breach of contract in relation to the termination of his employment. During the Hearing, the Claimant confirmed that his breach of contract claim related to the Respondent's failure to give him notice of termination

of employment and that he sought an uplift to damages for the Respondent's failure to comply with the ACAS Code on disciplinary matters. The Tribunal accepts, however, that the claim form also alleges that the termination was in breach of the Company's contractual obligation under its disciplinary procedure to carry out a full investigation prior to taking the decision to dismiss. As the Claimant was not legally represented, the Tribunal accepts that it should have raised this aspect of the claim on its own initiative and considered it during the course of the Hearing.

4. Even if that allegation had been considered, however, the claim for damages would still have failed. The Tribunal found that the Claimant had fundamentally breached his contract of employment. That released the Company from all its contractual obligations, including not only its obligation to give the Claimant notice of dismissal but also any obligations it had under a contractual disciplinary procedure.
5. The other issue raised in the Claimant's second application was the fact that the Company discovered evidence of his fundamental breach of contract only after it had already decided to dismiss him. The Court of Appeal has confirmed, however, in Boston Deep Sea Fishing and Ice Co v Ansell (1888) 38 ChD 339 that an employee's fundamental breach of contract provides a defence to a breach of contract claim even if the employer found out about the employee's breach after dismissing him.
6. As there is no reasonable prospect of the original decision being varied or revoked the Claimants' applications are refused.

Employment Judge Cox

Date: 30 August 2018