



EMPLOYMENT TRIBUNALS

Claimant: Mr M Khan

Respondent: EAT Food Ltd

JUDGMENT

The claimant's application dated **13 August 2018** for reconsideration of the judgment sent to the parties on **31 July 2018** is refused.

REASONS

1. By the judgment sent to the parties on 31 July 2018, the claimant's complaint of unfair dismissal was dismissed.
2. By Rule 72-73 of the Employment Tribunal Rules of Procedure 2013 the parties may apply for reconsideration of judgments made by a tribunal.
3. The sole ground from which a judgment may be reconsidered is that it is necessary in the interests of justice to reconsider it.
4. By Rule 72(1) the Judge shall refuse the application if he considers that there is no reasonable prospect of the decision being varied or revoked.
5. The claimant applies for reconsideration of the judgment on the following grounds:
 - a. That there was insufficient investigation into his alleged misconduct, namely attempting to remove from his workplace three bags of food (without payment), contrary to the rules and procedures of the respondent.
 - b. That he had been 'trapped' by managers who were ill-disposed towards him; this appears to be a contention that there was no genuine belief

- on the part of management that he had committed the misconduct in question or that it warranted dismissal;
- c. That it was common practice for employees to take food away from the workplace and/or that colleagues who had taken food off the premises in like circumstances had not been dismissed.
6. The application for consideration, however, raises nothing new, rearguing points previously made before the tribunal.
 7. In particular:
 - a. I held (at paragraph 27 of the reasons) that a full investigation of the matter was carried out, at least as full an investigation as was reasonable in the circumstances (as more fully set out in that paragraph); I can see no basis for revisiting this conclusion;
 - b. There was no evidence to support the allegation that management did not genuinely regard the claimant as guilty of misconduct and (at paragraph 27 of the judgment) I held that it was clear from the evidence that the respondent regarded the employee as guilty of misconduct in the form alleged. I can see no basis for revisiting this conclusion.
 8. In the judgment I considered carefully the question of whether the claimant had acted in accordance with common practice outside of the respondent's written procedures and concluded that he had not. I concluded that management were entitled to conclude (as it did) that the conduct of the claimant fell outside any practice and that he knew that what he was doing was wrong. There was ample evidence to support this conclusion. In particular, it was relevant that the claimant had previously received a final warning for taking additional food without permission. The respondent had stopped short of dismissal on that occasion, as the claimant had demonstrated that he realised that it was his mistake to take the items and should either have paid for them or waited until the end of the shift to see if they were being disposed of and then ask a manager for permission. Although the written warning had expired at the time of his dismissal, it demonstrated that the claimant was well aware of the limits of the practice, in particular that permission was required to be granted by a manager before removing expiring food. The respondent also (reasonably in my judgment) relied on the amount of food removed ie three bags. as being outside any acceptable practice.
 9. Accordingly, I concluded that management were entitled to conclude that the claimant was guilty of gross misconduct and that it was within the range of decisions to which management might reasonably come to dismiss him. It was reasonable for management to conclude that no other remedy than dismissal was appropriate, given the warnings in the respondents' written procedures regarding the seriousness of breach of the relevant policies and their conclusion that the respondent knew that what he was doing was wrong.

10. There was no evidence of other employees (who had not been dismissed) who had taken food in the quantity taken by the claimant knowing that it was not permitted. There is therefore no basis for the contention of disparate treatment.

11. I therefore, for the reasons given above, decided to reject this application for a reconsideration. I do so because there is no reasonable prospect of varying or revoking my earlier decision.

Employment Judge **Bloch QC**

13 September 2019
Date _____

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE