



EMPLOYMENT TRIBUNALS

Claimant: S Qasim

Respondent: Mercedes Benz Retail Group UK Ltd

Heard at: Watford **On:** 29 October 2021

Before: Employment Judge Housego

Representation

Claimant: None

Respondent: Written application

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. At a case management hearing on 09 August 2021 I made a deposit order against the Respondent. It was not sent to the parties until 08 October 2021.
2. On 20 October 2021 the Claimant applied for a reconsideration of the order.
3. The request was in these terms:

"We write with reference to the Deposit Order of Employment Judge Housego sent to the parties on 8 October 2021. We would respectfully seek a reconsideration of this decision and believe it to be in the interests of justice to do so.

We would submit that the fair conduct of the proceedings could have been impacted by the absence of the solicitor with actual conduct of the case for the Respondent who could not attend due to annual leave. It would be further impacted by the fact that the Employment Judge records not having a copy of the pleadings and further, the fact that the hearing initially commenced in the absence of the Respondent's representative, the Employment Judge initially seemingly under the initial false impression that the Claimant was self-representing and Mr Forsyth (for the Claimant) was in attendance for the Respondent.

With disclosure having taken place, the Claimant would have been able to see the reasons for the distinction between the Claimant and his named comparator. The Claimant was ultimately responsible final checks before monies were transferred to the rogue. Whilst the Respondent may have initially had suspicions of dishonesty and investigated both the Claimant and his comparator, the Claimant was disciplined and demoted for failing for not undertaking suitable checks before that final sign off. Ultimately, there was no finding of dishonesty with regard to the Claimant. The Claimant's comparator could not be implicated in substantial wrongdoing in the earlier stages of the transaction as evidence would indicate that his signature had been forged. Given that the comparator could demonstrate he was not at work that particular day, no further action could practically be taken against the comparator for dishonesty or otherwise. There can be no credible comparison between the Claimant and the comparator in such circumstances.

We note that Paragraph 37 of the case management refers to another comparable incident regarding the comparator and the trade of another Range Rover vehicle. This allegation was not part of the Claimant's original claim, but the circumstances are not comparable in any event. First, contrary to the Claimant's assertion, there was no cash back in respect of this transaction. The vehicles exchanged were of comparable value making in our view the transaction less patently suspicious than the one involving the Claimant. Moreover, although the vehicle transpired to be cloned, the V5 document was in the name of the customer who sought to trade the vehicle. This was not the case in the Claimant's transaction and the Claimant's failure to do such a rudimentary check and not acknowledge his failings led to the Respondent's decision to discipline and demote the Claimant.

In the circumstances, we would submit that the ordering of the deposit is wholly unwarranted and we would respectfully request that this order be revoked."

4. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. A 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. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or 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.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the 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 Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be,

the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

5. I am by no means satisfied that a deposit order is a “judgment” to which these Rules apply. There is no provision in Rule 39 indicating that there may be an application for reconsideration can be made in respect of a deposit order. However, Rule 29 enables a Tribunal to set aside a case management order if considered necessary in the interests of justice, and so I have reviewed the deposit order in the light of the email set out above.
6. Dealing with the points in that email:
 - 6.1. That the Respondent was represented by a representative who was not fully briefed is not a reason to review the order, unless the result is an unjust order.
 - 6.2. That it appeared at the start of the hearing that the Claimant was unrepresented and that the Claimant’s representative was for the Respondent is not material: it soon became apparent that this was not the case for he set out a position favourable to the Claimant.
 - 6.3. The Respondent states that disclosure will make clear the reasons why the Claimant and the comparator were treated differently. It then pleads a case, not, apparently, pleaded before.
 - 6.4. The pleadings were not provided to me, but the very least the Respondent’s representative is to be expected to have for a case management hearing is the claim form and response. If there was a logical objection to the reasons set out for the making of the deposit order from the pleaded cases it could and should have been set out in the case management hearing.
 - 6.5. It is said that the other incident was not originally pleaded, and the same applies, as above. It is now clearly set out as part of the Claimant’s case, not as a separate allegation, but as a matter said to have relevance for

the credibility of the Claimant's account. It is not a reason to revoke the order.

7. There is no injustice to the Respondent in the making of the deposit order. There is no difficulty in them paying the deposit. The Tribunal hearing this case will not see the deposit order, only the case summary in the case management order. The Respondent can defend the claim fully. The effect of the order is to put the Respondent at risk of a costs order if it loses the case largely on the basis set out in the deposit order. If the Respondent is as confident in its case as it says, this is no issue for it. If the case is decided on the basis set out in the deposit order, then it will self evidently have been correct.
8. In short, the Respondent is at risk of costs if it loses the case on the basis set out in the deposit order, and that still seems to me entirely just. If it wins, it will get the deposit repaid to it.

Employment Judge Housego

Dated 29 October 2021

JUDGMENT SENT TO THE PARTIES ON

9 November 2021

FOR THE TRIBUNAL OFFICE