THE INDUSTRIAL TRIBUNALS

CASE REF: 21662/20IT

CLAIMANT: **Eugene McReynolds**

RESPONDENT: **Robinson Services Laundry Ltd**

Reconsideration Judgment

Following reconsideration under rule 68 of The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, the original decision issued on 25 November 2021 is confirmed.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Bell**

Members: **Ms D Adams**
Mr M McKeown

1. The tribunal is required under Rule 2 of The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 to seek to give effect to the overriding objective in interpreting or exercising any power given to it by the Rules.

2. A tribunal may reconsider any judgment ("the original decision") where it is necessary in the interests of justice to do so (Rule 64).

3. The claimant by email on 6 December 2021 made application for reconsideration of the judgment issued on 25 November 2021 (in compliance with the requirements for an application under Rule 66) in relation to the tribunal's decision that an Article 17 uplift of the compensatory award was not appropriate.

4. The claimant in summary contended that the respondent had deliberately chosen not to start the Statutory Dismissal and Disciplinary Procedure [**SDDP**] process on 3 September 2020 and motivated by financial saving had taken affirmative action to evade it by directing the claimant to write a resignation letter and the finding of fact at Para 75 that '…..<u>it had not yet been practicable for the respondent to have commenced and complete the SDDP</u>…' conflicted with findings at:-

Para 14, that Mr Woods told the claimant to 'let him know as soon as possible to be included for consideration for redundancy…'

Para 20, that at the beginning of September 2020, 'Mr Woods advised the claimant if the position did not suit that he could take redundancy.'

Para 22, "On or about 3 September 2020 the claimant again spoke with Mr Woods. The claimant told Mr Woods the alternative job discussed was unsuitable for him as it was a multi-drop van driving job that was beyond his capabilities and he had no choice but to take redundancy. Mr Woods replied: *I'm sorry Eugene but I can't give you redundancy as there is a job there for you, but I'll tell you what I could do. Write a resignation letter, saying that you are resigning and that your last day will be [Sunday] 13th September, and I will get you £1,500, but I'm only doing this because you're a good person, but don't tell anyone else, or you'll not get it. Mr Woods confirmed in his testimony that he had told the claimant to tell no-one of the offer because it was a private matter*."

Para 23, "The respondent as confirmed by Mr Woods under cross examination did not at that time have sufficient work to sustain the claimant in the Laundry operative role he had been carrying out. The respondent hoped the claimant would accept the proposed alternative role offered to him and had not given consideration to otherwise returning the claimant to furlough leave."

5. Upon consideration by the Employment Judge under rule 67 (1) of the claimant's application under rule 66, to ensure in the interests of justice this matter had been fully ventilated the respondent having at substantive hearing indicated an intention to address further the Article 17 Uplift sought by the claimant in closing submissions, but not done so, nor the claimant then commented further thereon, notice was sent to the parties on 12 January 2022 under rule 67 (2) for any response to the application by the respondent and views of the parties whether the application could be determined without a hearing to be presented no later than 26 January 2022.

6. By email of 14 January 2022 the claimant confirmed its view that the application could be determined without a hearing.

7. By email of 24 January 2022 the respondent presented its objection to the claimant's reconsideration application and confirmed neutrality upon the need for a hearing. The respondent contended in summary the tribunal's finding that it had not been practicable for the Respondent to commence and/ or complete the statutory dismissal procedure was correct and consistent with the evidence and-

   a. Claimant's reconsideration application misconceived.

   b. Claimant found to have been constructively dismissed.

c. LRA Code of Practice on Disciplinary Procedures guidance unequivocal that the SDDP does not apply to constructive dismissal.

d. SDDP only relevant where the employer is considering dismissing the employee or imposing some other sanction and dismissing the claimant was not in the respondent's contemplation at the time of his resignation and so not relevant.

e. Claimant's decision to resign in advance of any redundancy/dismissal process removed any obligation for the respondent to follow the statutory minimum procedure.

f. Claimant's reliance on findings of fact at:-

   i. Paragraph 14 was confused, it relating to a conversation in July 2020 about an initial round of redundancies not involving the claimant. The claimant was not included in the selection pool at that time as he wished to remain in employment.

   ii. Paragraph 20. Whilst the tribunal found that Mr Woods in September 2020 advised the claimant the nightshift would no longer be running and ,'if the position did not suit he could take redundancy', it subsequently found at Paragraph 22 Mr Woods advised the claimant, 'I can't give you redundancy as there is a job there for you'. Irrespective of any previous offers of redundancy, immediately prior to the claimant's resignation he was advised that he would not be entitled to a redundancy payment given the offer of an alternative role. The claimant could have waited to see if the respondent chose to dismiss him but instead chose to resign in response to an anticipatory breach of his contract.

g. The offer of an alternative role to the claimant demonstrated clear willingness to retain the claimant in employment undermining the suggestion of decisive action to achieve termination of the claimant's employment. The claimant's mistaken belief he would receive £15000 was also a relevant factor in motivating his resignation.

h. The respondent denied attempting to eschew statutory dismissal procedures and was no evidence that it deliberately evaded its statutory obligations.

8. Having regard to both parties' responses to notice sent under rule 67(2) the employment judge under rule 68 (1) considered that a hearing was not necessary in the interests of justice and parties were advised accordingly and given under rule 68(2) until 11 February 2022 to make further written representations before the reconsideration proceeded without a hearing. No further representations were presented.

9. Upon reconsideration by the tribunal of the original decision taking into account the claimant's application for reconsideration and respondent's objections:-

10. The tribunal overall prefer the respondent's contentions.

11. The *LRA CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES* sets out, 'Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty other than suspension on full pay or a warning. Guidance on this statutory procedure is provided in paragraphs 30-36. This procedure applies to dismissals (except for constructive dismissals) ….' (Section 1, Point 6).

12. The tribunal was cognisant in making its original decision of disagreement over whether at the point of the claimant's resignation the SDDP should have been commenced.

13. The tribunal specifically found relevant to remedy at Paragraph 61 of the original decision that the respondent was hopeful of retaining the claimant in the alternative role offered and had not yet commenced the SDDP; and at Paragraph 71, that in the absence of the claimant tendering his resignation letter or accepting the alternative role offered the claimant was likely otherwise to have returned to furlough leave and/or otherwise ultimately been dismissed by the respondent by reason of redundancy *such that his employment would not have terminated immediately but to have continued for some further period sufficient for completion of fair redundancy and dismissal procedures*.

14. An Article 17 Uplift is required to be applied to awards in specified jurisdictions where an applicable statutory procedure was **not completed** before the proceedings were begun, and it **wholly or mainly attributable** to failure by the employer **to comply with a requirement of the procedure**.

15. It was contended for the claimant that Mr Woods motivated by financial saving had taken affirmative action to evade the SDDP by directing the claimant to write a resignation letter.

16. The tribunal remains of the view that the principle and effective reason for the claimant's resignation was the respondent's expressed intention to discontinue the night shift and proposed change to his contractual duties, an anticipatory breach of the claimant's implied contractual terms, rather than an instruction or suggestion of Mr Woods to provide a resignation letter or belief he would receive £15000.

17. The tribunal considers even if accepted the SDDP should have *commenced* by 3 September 2020, that the claimant's resignation cut short the opportunity of the SDDP being *completed* thereafter. The tribunal is not persuaded the reason the SDDP was not completed before tribunal proceedings were begun was wholly or mainly attributable to failure by the respondent to comply with a requirement therein and an Article 17 uplift accordingly appropriate.

Conclusion

18. The original decision issued on 25 November 2021 is confirmed.

Employment Judge: *E J Bell*

Date: 22 March 2022

This judgment was entered in the register and issued to the parties on: 12 April 2022