EMPLOYMENT TRIBUNALS

Claimant: **Mr P. Genockey**

Respondent: **(1) DHL Logistics Limited**
(2) Norco Group Limited
(4) Jungheinrich UK Limited

Heard at: Birmingham **On: 5 February 2018**

Before: Employment Judge Butler

Representation
Claimant:
Respondent:

JUDGMENT

The Claimant's application dated 18 June 2017 for reconsideration of the Judgment sent to the parties on 19 April 2016 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked because:-

1. The Claimant considers he should be classed as a worker for the First Respondent because they reported to his employer, the Second Respondent, that he had committed an act of gross misconduct. He states that he should be found to be a worker as the First Respondent "constructed evidence that went beyond what was necessary if I was not a worker….." then goes on to state that the First Respondent's evidence on the point was conflicting. He then seeks to make comments about the fairness of his dismissal, which was not in issue before the Tribunal. I find that the fact the First Respondent notified the Claimant's employer of a potential act of gross misconduct cannot be legally construed as justifying the fact he is a worker of the First Respondent. There is no evidence that the First Respondent disciplined the Claimant which action was undertaken by his employer.

2. The Claimant states that PPE and other equipment was provided for him by the First Respondent, but also states his employer provided such

equipment. He relies on this and the fact that he had to complete a checklist for the First Respondent recording the progress of battery changes and its equipment. This is a point considered in detail in the original Judgment and does not justify a finding that the Claimant was a worker of the First Respondent.

3. The Claimant's reliance on the decision in McTigue v University Hospital Bristol NHS Foundation Trust UK EAT/0354/15/JOJ is misconceived. In that case, the Claimant was an Agency worker, supplied to the Respondent by the Agency which employed her. The Respondent also entered into an "honorary contract of employment" with the Claimant. She worked within the Respondent as a member of a team and was held out as such to third parties. Accordingly, she was held to be a worker of the Respondent under the terms of Section 43K(1)(a)(ii) Employment Rights Act 1996 as the terms on which she was engaged to do the work were substantially determined by the Respondent, her Employing Agency or both of them. I do not consider the Claimant can compare his legal position with that of the Claimant in McTigue. Essentially, he relies only on matters which he relied on in the Hearing, namely, that he had to comply with the First Respondent's Health & Safety Rules and Procedures. He now adds that he had to fill in a checklist for the equipment he was servicing, which in no way indicates any degree of control over him or what he does or how he does it by the First Respondent.

4. There is no evidence before me that the Claimant was paid in accordance with terms determined by the First Respondent or that, for example, he is required to seek their permission to take holiday. Certainly, it is clear that he was subject to his employer's Disciplinary procedure and not that of the First Respondent.

5. The Claimant's application for reconsideration produces no sustainable argument that the reasons for the previous Judgment were in any way flawed. For this reason, the application for reconsideration is dismissed.

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Employment Judge Butler

Date: 26 .2.2018