EMPLOYMENT TRIBUNALS

Claimant: **Mr M Alexander**

Respondent: **First Greater Western Limited (t/a Great Western Railway)**

UPON APPLICATION made by email dated 15 November 2017 to reconsider the Judgment, sent to the parties on 3 November 2017 ("**Judgment**"), under rule 71 of the Employment Tribunals Rules of Procedure 2013 ("**Rules**").

JUDGMENT

The Claimant's application for reconsideration is refused and the Judgment is confirmed.

REASONS

Background

1. The Claimant's email of 15 November 2017 set out his application for reconsideration of the Judgment. In that Judgment I had concluded that his claims of unfair dismissal, breach of contract and unlawful deductions from wages had not been brought within the relevant three months' time limit, and that it had been reasonably practicable for him to have brought his claims within that time limit and therefore that his claims should be dismissed. I also concluded that even if I had considered that it had not been reasonably practicable for the Claimant to have submitted his claim in time, he had not brought the claims within a reasonable time thereafter.

Issues and Law

2. Rule 71 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record was sent to the parties and should explain why reconsideration is necessary. Although the Claimant had not made a request for written reasons, the Judgment having been delivered orally on the day of the hearing, 20 October 2017, the Claimant's email satisfied the

requirements of rule 71 and therefore a valid application for reconsideration had been made.

3. Rule 72(1) notes that an Employment Judge shall consider any application for reconsideration made under rule 71, and that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked then the application shall be refused and the Tribunal shall inform the parties of the refusal. Alternatively, rule 72 sets out the process that is then to be followed for further consideration of the application.

<u>The Application</u>

4. The essence of my Judgment was that the Claimant had not submitted his claims within the required three months' time limit set out in the relevant legislation, and that it had been reasonably practicable for him to have done so. I also concluded that even if I had considered that it had not been reasonably practicable for the Claimant to have submitted his claim in time, he had not brought the claims within a reasonable time thereafter.

5. The Claimant was dismissed on 21 November 2016, and that date was the relevant date for the purposes of all his claims. However, he had not made contact with ACAS for the purposes of early conciliation until 12 May 2017, well over two months after the last date on which he should have made contact, i.e. 20 February 2017. The ACAS certificate was then issued on the same day, and the Claimant submitted his claim form to the tribunal on 22 June 2017.

6. In his claim form and orally before me, the Claimant put forward three explanations for his delay. One was the fact that that he had been waiting for the conclusion of criminal proceedings relating to the issues for which he was dismissed; a second was that he had been waiting for the conclusion of an internal appeal against his dismissal; whilst the third was that he had made contact with ACAS within the appropriate time periods but that ACAS had delayed in issuing the appropriate certificate.

7. I indicated to the Claimant that there were clear case authorities which meant that the first two explanations could not assist him. With regard to the third, there was no evidence before me of any contact with ACAS and I therefore concluded that it had been reasonably practicable for the claims to have been brought within time. I also indicated in the alternative that even if it had been reasonable for the claim not to have been issued until 12 May 2017, i.e. the day of the ACAS certificate, he had not brought his claims for a further six weeks. I considered that that did not constitute the commencement of proceedings within a reasonable time after the point at which it had become reasonably practicable to do so and therefore that his claims would have been dismissed on that ground in any event.

8. In his email, the Claimant indicated that, following my Judgment, he has made contact with ACAS who have told him that the information he has sought, about his contact with them earlier in the proceedings, can be made available via a freedom of information request; I suspect that should mean a data subject access request, but nothing turns on that. He

therefore asked for a delay of forty days, by which point ACAS will have provided the information, and for me then to reconsider my Judgment.

Conclusions

9. Rule 70 of the 2013 Rules specifies only one ground for reconsideration; namely where it is necessary in the interests of justice. This is a change from the provisions relating to reviews of judgments under the previous Rules issued in 2004, which specified, in Rule 34, certain specific grounds for review. These included, at Rule 34(3)(d), the availability of new evidence. Bearing in mind however, that the Claimant's application involved evidence from ACAS which was not put before me at the initial hearing, I considered it appropriate to have regard to case authorities which dealt with applications under that ground.

10. With regard to applications on the ground that new evidence was available, it has been long established, following the case of Ladd –v- Marshall [1954] 1 WLR 1489, that the party making the application needs to be able to show that the new evidence could not have been obtained with reasonable diligence for use at the original hearing, was relevant and would probably have had an important influence on the hearing, and was apparently credible. That requirement was largely reflected within the wording of Rule 34(3)(d) of the 2004 Rules which allowed a review where "*new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time*".

11. In this case, even if evidence is forthcoming from ACAS which supports the Claimant's contentions, there does not seem to be any reason why that could not have been put before me at the hearing in October. Applying the direction provided by the Ladd case therefore, I did not consider that would be appropriate for me to consider any evidence that might be obtained from ACAS.

12. However, notwithstanding my view on that, I did not consider that any evidence from ACAS which might have supported the Claimant's contentions, even if it had been available for me at the hearing in October, would have led to a different outcome. As I have noted above, I did not only consider the issue of whether or not it had been reasonably practicable for the the Claimant to have brought his claims within the relevant time limits, but also whether, if it had not been reasonably practicable, whether they had been brought within a reasonable time thereafter. Bearing in mind that my conclusion on that was that he had not, a conclusion which would not have been affected by any evidence about the Claimant's contact with ACAS, I did not consider that there was any reasonable prospect of my original Judgment being varied or revoked and I therefore concluded that the Claimant's application for reconsideration should be refused.

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Employment Judge S Jenkins

Date:………27/12/17…………...

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE