EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr J Fox-Warren	AND	Ivan Clarke Catering Butchers Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Exeter **ON** 27 October 2017

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR 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. The respondent has applied for a reconsideration of the judgment dated 16 October 2017 ("the Judgment"). That Judgment was prepared in full and read to the parties at the conclusion if the hearing on 16 October 2017 but owing to administrative difficulties has not yet been sent to the parties. The grounds for reconsideration are set out in the respondent's letter dated 17 October 2017. That letter was received at the tribunal office on 17 October 2017.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for

reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. The grounds relied upon by the respondent relate solely to the compensation awarded to the claimant and are these. First the respondent asks for a full breakdown of how the compensation was calculated. Secondly the respondent complained that the claimant did not know how much he was currently earning and did not give an actual date as to when his alternative employment started, and the respondent requests copies of payslips as proof of earnings. Thirdly with regard to future loss the respondent asserts that the claimant has failed to mitigate his loss sufficiently. I deal with each of these three points in turn.
5. In the first place there is a breakdown of the calculations set out in the Judgment which the respondent had not yet received at the time of its application. That aspect will clearly be resolved when the respondent receives the Judgment. Secondly, the claimant did state when his alternative employment had started and confirmed that this was in the second week in June 2017. As to proof of alternative earnings, and the third point relating to an alleged failure to mitigate loss, the respondent had every opportunity at the hearing to question the claimant who gave evidence as to his alternative earnings and likely future loss. The burden of proving any alleged failure to mitigate loss is on the respondent in the circumstances and the respondent failed to do this.
6. The matters raised by the respondent were therefore considered in the light of all of the evidence presented to the tribunal before it reached its decision.
7. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal (“the EAT”) in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean “that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”.
8. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires

the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

9. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge N J Roper
Dated 26 October 2017

Judgment sent to Parties on

6 November 2017