Case Number: 3325942/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Earle	**v**	**Arriva North London Ltd**

JUDGMENT

The claimant's application dated 18 June 2018 for reconsideration of the judgment sent to the parties on 5 June 2018 is refused.

REASONS

1. On 22 and 23 March 2018 at a substantive hearing before me, I determined that the claimant had not been unfairly constructively dismissed by the respondent. Full reasons were given at the time and written reasons for my decision were provided on 5 June 2018.

2. By rules 70-73 of the Employment Tribunals Rules of Procedure 2013, parties may apply for reconsideration of judgments made by a tribunal.

3. The sole ground upon which a judgment may be reconsidered is that it is necessary in the interests of justice to reconsider it.

4. Rule 71 provides that an application must be sent within 14 days of the date on which the decision was (or, if later, the written reasons were) sent to the parties. The application must be in writing and must set out why reconsideration of the original decision is necessary. The application was therefore received within the relevant time limit.

5. By rule 72(1), the application to have a decision reviewed shall be considered, where practicable, by the employment judge who made the decision, or who chaired the tribunal which made the decision. The judge shall refuse the application if he considers that there is no reasonable prospect of the decision being varied or revoked.

6. The grounds relied upon by the claimant are in summary that the tribunal made mistakes in its findings of fact and in reaching its conclusions on whether the claimant had been constructively dismissed.

7. The matters raised by the claimant were considered in the light of all the evidence presented at this tribunal before I reached my judgment. My

reasons for concluding that the respondent was not in breach of the claimant's contract of employment are set out unequivocally in my findings of fact. Having taken account of all the evidence before me I concluded that there was no conduct by the respondent which amounted to a breach of the implied term of mutual trust and confidence or any implied term to provide a safe working environment.

8. The Employment Appeal Tribunal 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 (now called reconsideration). In addition, in Fforde v Black 68/80 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*". This is not the case here. In addition it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.

9. The fact that the decision went against the claimant and that he was unsuccessful in persuading me that his employer was in breach of his employment contract is no basis for reconsidering my decision.

10. I should add that the evidence to which the claimant refers, and has included, in support of his application was evidence that was available at the time of the hearing and this is not new evidence that has become available since the conclusion of the substantive hearing resulting in the Judgment to which this application relates. In any event it would not have had any bearing on my decision.

11. I have therefore, for the reasons given above, decided to reject this application for reconsideration. I do so because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge Wyeth
2 August 2018
Date: ……

Judgment sent to the parties on
6 August 2018
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For the Tribunal office