EMPLOYMENT TRIBUNALS

Claimant: Ms S J Finlayson-Sitch

Respondent: Cheyne 18 Ltd

Heard at: Exeter **On:** 11 January 2019

Before: Employment Judge Housego

Representation

Claimant: None
Respondent: Written application

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the reserved judgment dated 30 November 2018 which was sent to the parties on 11 December 2018 ("the Judgment"). The grounds are set out in their letter dated 21 December 2018. That letter was received at the Tribunal office on that date because it was emailed in.

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 put forward by the claimant are that:

    a. They apologised for not attending, but could not know that the claimant would mislead the Tribunal;
    b. They had evidence to prove that the claimant was not unfairly constructively dismissed.
    c. They had new evidence they wished to put before the Tribunal. They attached some of it, including witness statements from a director of the respondent, a colleague of the claimant and a human resources consultant.

5. There was no claim of unfair dismissal. The issue of unfair (or wrongful) dismissal arises only by reason of the claim for notice pay. This is apparent from the claim form (box 8.2), and in a detailed letter from the representative of the claimant (Swann Turton LLP) dated 06 December 2017 to Sam Kirkwood of the respondent. The claim form clearly stated that the claimant asserted that she had been the victim of a fabricated claim of misconduct to evade paying notice pay. The letter from her lawyer stated:

> *"During our client's employment, she has been subjected to unwanted conduct which has had the purpose or effect of violating her dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment. She has further been falsely accused of misconduct, in a misguided attempt to avoid paying our client the sums due to her. This has caused our client severe anxiety and as such, she has been signed off work and prescribed anti-anxiety medication. Mr Kirkwood's conduct was so distressing and given the numerous breaches of the Employment Contract by the company, our client was left with no option but to formally resign on 16 November 2017 ("the Termination Date"); 14 days before the previously agreed date of her dismissal. Given the significant breaches of the Employment Contract and the bullying and harassment that our client has endured, she is entitled to payment in lieu of one month's notice in accordance with the Employment Contract."*

6. Accordingly the respondent was on notice as to the matters put forward by the claimant, and why. It was the same Sam Kirkwood, to whom that letter was written who completed the response, stating that the claimant had resigned without giving notice.

7. One witness statement provided with the application for reconsideration states:

    "Abigail Kirkwood. I am a barrister and was a Director of Cheyne 18. I am also married to Sam Kirkwood, the Director of Cheyne 18."

There is no difficulty, then, of not seeking advice.

8. The respondent emailed the Tribunal before the hearing indicating in no uncertain terms that the respondent would not be attending the hearing.

9. 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 68/60 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.

10. The respondent does not like the findings of fact made at a hearing which it chose not to attend, it being clear beforehand what issues were to be determined and precisely what allegations the claimant was making. That is not a good reason to seek a reconsideration.

11. 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 Housego

Dated: 19 January 2019