EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Harris	**v**	The Protector Group Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application dated 26 October 2017 for a reconsideration of the Judgment dated 12 October 2017 sent to the parties on 13 October 2017 (with Reasons sent at a later date) is refused.

REASONS

1. In this Judgment the following expressions have the following meanings:
1.1 "the Judgment" means the Judgment dated 12 October 2017 and sent to the parties on 13 October 2017.
1.2 "the Reasons" means the reasons for the Judgment sent to the parties at the request of the claimant.
1.3 "the 2013 Rules" means Schedule I to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013
1.4 "the Application" means the application from the claimant dated 26 October 2017 for the Judgment to be reconsidered.
1.5 "the Hearing" means the hearing before me on 12 October 2017.

The History of the Matter

2. This matter came before me for full hearing on 12 October 2017. I issued an oral judgment with reasons at the conclusion of the hearing. The Judgment without reasons was sent to the parties on 13 October 2017.

3. On 18 October 2018 the claimant requested the Reasons and these have now been completed and sent to the parties.

4. On 26 October 2017 the claimant made the Application.

5. In reaching my decision on the Application, I have considered all the above documents and I have considered again all the evidence and documents which were before me at the Hearing.

The Law

6. I have reminded myself of the relevant provisions of Rules 70 -72 of the 2013 Rules which read:

Rule 70. A Tribunal may either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If revoked it may be taken again.

Rule 71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Rule 72(1). An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal……

7. The 2013 Rules came into force on 29 July 2013 and introduced the new concept of reconsideration of judgments rather than a review of judgments as it was entitled under the previous 2004 Rules of Procedure. In the 2004 Rules there were five grounds on which a review could be sought and the last of the five was the single ground that now exists for a reconsideration under the 2013 Rules namely that the interest of justice render it necessary to reconsider. I consider that any guidance on the meaning of "the interests of justice" issued under the 2004 Rules (and the earlier Rules) is still relevant to reconsiderations under the 2013 Rules although the matter is very much one for me when carrying out (as I now do) a preliminary assessment of the Application.

8. I remind myself that the phrase "*in the interests of justice"* means the interests of justice to both sides. I remind myself of the guidance from the Employment Appeal Tribunal in **Redding v EMI Leisure Limited EAT 262/81** where it was stated:

"when you boil down what is said on (the claimant's) behalf, it really comes down to this: that she did not do herself justice at the Hearing, so justice requires that there should be a second Hearing so that she may now. Now "justice" means justice to both parties".

I remind myself of the comments made by the Employment Appeal Tribunal in **Fforde v Black EAT 68/80** where it was said that the words in the "interests of justice" do 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 interest 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".

I have reminded myself of the guidance to Tribunals in **Newcastle upon Tyne City Council – v- Marsden 2010 ICR 743** and in particular the words of Underhill J when commenting on the introduction of the overriding objective (now found in Rule 2 of the

2013 Rules) and the necessity to review previous decisions and on the subject of a review:

*"But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in **Jurkowska v Hlmad Ltd**. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic"*

> *"… that dealing with cases justly requires that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made."*

*The principles that underlie such decisions as **Flint** and **Lindsay** remain valid, and although those cases should not be regarded as establishing propositions of law giving a conclusive answer in every apparently similar case, they are valuable as drawing attention to those underlying principles. In particular, the weight attached in many of the previous cases to the importance of finality in litigation – or, as Phillips J put it in **Flint** (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry – seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal").*

9. I have considered the further guidance on the 2013 Rules from HH Judge Eady in the decision **Outasight VB Limited –v- Brown UKEAT/0253/14/LA.** I have considered that guidance and in particular have noted what is said about the grounds for a reconsideration under the 2013 Rules:

"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3)(d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3)(e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules".

Conclusion

10. The Application makes no mention of the ground for the reconsideration but I take it that the claimant asks me to reconsider on the basis that the interests of justice require me so to do.

11. The claimant sets out five matters as the basis for the Application. I deal with each in turn.

13. The claimant states that the Hearing was late beginning because I was reading into the case. My notes show that the hearing began at 11:00am after I had spent time reading the witness statements and the relevant documents from the agreed bundle which the parties only brought to the Tribunal that morning. I took 90 minutes to read into the case and in that time read all relevant statements and documents. I had read the file previously. The hearing went on until 1pm and was adjourned until 2pm. The hearing continued until 4:10pm when I adjourned to deliberate. I recalled the parties at 4:50pm and delivered an oral judgment until 5:10pm. That timetable is entirely normal for the Tribunal and is no basis for reconsideration of the Judgment.

14. Secondly, the claimant refers to the fact that the conversation between himself and Bill Long ("BL") was a private conversation and not the reason the respondent dismissed him. These matters were raised and dealt with at the Hearing and are covered in the Reasons.

15. Thirdly, the claimant raises the issue that the recording made of his conversation with BL was a covert recording. This matter was fully rehearsed at the Hearing and is dealt with in the Reasons.

16. Fourthly, the claimant raises the fact that Philip Arthur ("PA") was not present at the Hearing. This is no reason to reconsider the Judgment. As I made plain at the hearing and in the Reasons, my function was to consider whether the respondent acted reasonably in moving to dismiss the claimant. I had to review the matters which were before the respondent at the disciplinary hearing and the appeal hearing. PA did not attend either hearing. This is no ground to reconsider the Judgment.

17. Fifthly, the claimant raises the matter again of the decision by the Police not to pursue any criminal action against him. This matter was fully ventilated at the Hearing and I refer to it in the Reasons. This provides no basis on which to reconsider the Judgment.

18. The matters raised by the claimant are effectively asking me to look at this matter again without raising any new evidence or other matter which I did not fully consider at the Hearing. In essence it is a disappointed litigant asking for a second bite of the cherry. The interests of justice do not extend so far as is made clear in the case of **Marsden** (above).

19. In the circumstances, I see no reasonable prospect of the Judgment being varied or revoked and accordingly I refuse the Application pursuant to Rule 72(1) of the 2013 Rules

_____

A M Buchanan EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 4 January 2018