Case Number: 2500982/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr G Clark	**AND**	**Capita P& I limited**

Heard at: North Shields **On 12 February 2018**

Before: Employment Judge Shepherd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. An oral judgment and reasons having been given to the parties at the conclusion of the hearing on 13 December 2017 and written reasons having been provided to the claimant on 10 January 2018, the claimant has made a request for a reconsideration of the reasons of the Tribunal dated 22 January 2018. I have taken this as an application for a reconsideration of the judgment.

2. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

> "70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 it is revoked it may be taken again.

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.

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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations."

3. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a Judgment could be reviewed The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interest of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J **in Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

4. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

> "Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before".

In the case of **Fforde v Black EAT68/80** where it was said that this ground does not mean:

> "That in every case where a litigant is unsuccessful 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 even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order".

5. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/81** 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, 'justice' means justice to both parties".

6. The claimant has set out a lengthy document consisting of 17 pages in which he firstly sets out a preface in which he emphasises the point made by Employment Judge Garnon at a preliminary hearing in which it was stated that the main issue was whether the claimant had a contractual entitlement to be paid at SPC 34. The judgment at the substantive hearing was that I was not satisfied that the claimant had established that there was a contractual right to higher pay. This was not a case in which construction of the terms of the contract was an issue.

7. The claimant refers to the written reasons for the judgment in which it is stated that the claimant may have a good argument that he should move up a grade but that is not the issue to be considered at this Tribunal. This is a complaint with regard to the correct job evaluation which is not within the jurisdiction of the Tribunal. That is why that issue was not considered in reaching the judgment.

8. I consider that I have given appropriate weight to the evidence provided at the hearing. The claimant refers to my indication that the fact that his Trade Union representative provided a written witness statement and did not attend to provide oral evidence and that, in those circumstances, his evidence carries less weight than evidence given in person to the Tribunal. The claimant asks if this is an agreed protocol. Keith Oliver, his Trade Union representative, was unable to attend the Tribunal and the claimant says that the fact that he was unable to attend must not detract from the content of his signed statement.

9. It is not a protocol but it is important that, in the interests of justice, evidence is properly examined. A Tribunal will take into account a number of factors such as the demeanour of a witness and the coherence of his evidence when assessing credibility. A witness who merely provides a written statement will not carry as much weight as oral evidence which has been subject to challenge and assessment of the credibility.

10. The claimant, in his application for a reconsideration states that he is astonished that an agreement reached between a respected trade union representative and a senior manager is not offered the respect of being accepted as a true event. The

statement of Keith Oliver provides no specific evidence of the actual discussion and the wording of the alleged verbal agreement. Indeed, it was not apparent to the respondent that the alleged agreement had not been made directly with the claimant until the oral hearing at the Tribunal. The claimant was unable to give direct evidence with regard to the alleged agreement and it was only apparent at the oral hearing that he was relying on an agreement said to have been reached with his trade union representative.

11. The claimant requests "that a formal re-evaluation is made of the facts". He sets out extracts from the reasons for the judgment and is seeking to re-argue the case that was heard at the substantive hearing. It is clear that the claimant disagrees with my findings. It is self-evident that in, the majority of Employment Tribunal cases, the unsuccessful party will not agree with the findings and will consider that it is in the interests of justice that the judgment be reconsidered. However, that is not the purpose of a reconsideration. The claimant has not referred to any procedural error or a denial of natural justice.

12. The claimant says that the full extent of his contract is unequivocal and that a clear agreement was reached between management and his trade union. Having considered all the evidence, I concluded that the claimant had not established this.

19 I have considered this case carefully. I have reached the view that a hearing is not necessary in the interests of justice. There is no reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

12 February 2018.