EMPLOYMENT TRIBUNALS

Claimant **Respondent**
Mr. C. Pritchard **V Italia Conti Academy of Theatre Arts Ltd**

Held at: London Central (on the papers) **On: 13 February 2019**

Before: Employment Judge Mason

REFUSAL OF RECONSIDERATION REQUEST

The Claimant's application for reconsideration of the judgment sent to the parties on 9 January 2019 ("the Judgment") is refused. It is not necessary in the interests of justice to reconsider the Judgment; there is no reasonable prospect of it being varied or revoked under Rule 70 Employment Tribunals (Constitution & Rules of Procedure) Regulation 2013.

REASONS

1. A Tribunal has power to reconsider any decision where it is necessary in the interests of justice to do so (Rule 70 ETs (Constitution & Rules of Procedure) Regs 2013 ("the Rules"). The power is exercisable either on the Tribunal's own initiative or on the application of a party. On reconsideration, the decision may be confirmed, varied or revoke; if revoked it may be taken again.

2. Following an open Preliminary Hearing on 20 and 21 December 2018, the Tribunal found that the Claimant was not an employee of the Respondent and the Tribunal therefore did not have jurisdiction to hear the Claimant's claim for automatic unfair dismissal under s103A Employment Rights Act 1996. His claim was dismissed for reasons set out in the Reserved Judgment sent to the parties on 9 January 2019.

3. The Claimant wrote to the Tribunal on 23 January 2019 by email (with various enclosures) asking for a reconsideration of the Judgment on the following grounds:

3.1 With regard to the authority (implied or ostensible) of Mr. Graham Sheward to enter into agreements with the Claimant on behalf of the Respondent, the Claimant says:

(i) Mr. Sheward was a part-owner of the business;

(ii) In another (unrelated) Employment Tribunal case against the Respondent, an Employment Judge commented that Mr. Sheward "*was an influential figure behind the scenes*".

(iii) The evidence of Mrs. Samantha Newton as to the status and authority of Mr. Sheward was "*wilfully disingenuous*".

(iv) He believes Mrs Newton and Ms Gaynor Shepherd were out of the UK for most of 2016.

4. I have considered the Claimant's letter and various enclosures but conclude that it is not in the interests of justice to review the Judgment. I gave full reasons (para. 17 Judgment) for concluding that Mr. Sheward did not have authority to enter into the 19 August 2016 Consultancy Agreement and the Claimant's request for a reconsideration amounts to no more that a disagreement with my findings of fact.

4.1 I noted (para. 10 Judgment) that Mr. Sheward resigned as a director on 1 December 1994 and that there is some dispute regarding the identity of the shareholders in Italia Conti Holdings Ltd but that this was not relevant for the purposes of my determination of the sole issue of whether or not the Claimant was an employee. The documents the Claimant has now adduced relating to the shareholder dispute are therefore not relevant.

4.2 A finding by another Employment Tribunal Judge in a different case is of no relevance as each case turns on its own particular facts.

4.3 I formed a view of the credibility of the evidence of Mrs. Newton at the hearing and whilst the Claimant may disagree with that assessment, this is not grounds for a reconsideration.

4.4 The Claimant has adduced new evidence which he says shows that Mrs. Newton and Mrs. Gaynor Sheward were out of the UK. However, these documents are inconclusive and in any event, this is not evidence which could not have been reasonably known of or foreseen at that time; the evidence could have been obtained with reasonable diligence for use at the original hearing. It is not in the interests of justice for parties in litigation to be given a second bite of the cherry because they failed to adduce all relevant evidence in support of their case at the original hearing.

4.5 In any event, as made clear in the Judgment (para. 43) whether or not Mr. Sheward had authority to enter into the Consultancy Agreement on 19 August 2016, the Claimant accepts that this was a Consultancy Agreement (i.e. an agreement for him to provide his services as a consultant) and I concluded that the subsequent letter of 28 September 2018 was a contract of employment (or evidence of a contract of employment) for reasons which are unrelated to Mr.

Sheward's status or authority. I then went on to analyse the real relationship between the parties (**Autoclenz**) and Mr. Sheward's status or authority played no part in that analysis (para. 43).

5. In conclusion, I refuse the application for a reconsideration because there is no reasonable prospect of the Judgment being varied or revoked. The matters referred to by the Claimant were ventilated and properly argued at the Tribunal hearing when the Claimant was represented by counsel and the Claimant is effectively asking for a second hearing of these points; however, it is in the public interest that there should be finality in litigation and the interests of justice apply to both sides. As the EAT decided in **Fforde v Black EAT 68/60** , the interests of justice 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. The 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.

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Employment Judge H Mason

Date: 13 February 2019

Sent to Parties on

6 March 2019

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