



EMPLOYMENT TRIBUNALS

Claimant

Mr CA Fernandes

and

Respondents

Twenty-Four Seven Recruitment
Services Limited and others

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 Judgment dated 26 June 2017 which was sent to the parties on 26 June 2017. The grounds are set out in his application of 5 and 11 March 2019.
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 outside the relevant time limit.
3. Under rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the rules or in any decision, whether or not (in the case of an extension) it has expired.
4. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell to be corrected on appeal and not by review.

In addition, in *Fforde-v-Black* EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) 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*”. More recent case law has suggested that the test should not be construed as restrictively as it was prior to the introduction of the overriding objective (which is now set out in rule 2) in order to ensure that cases are dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it is no longer the case that the ‘interests of justice’ ground was only appropriate in exceptional circumstances. However, in *Newcastle Upon Tyne City Council-v-Marsden* [2010] IRLR 743, the EAT stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

5. The Claimant explained in his letter of 11 March 2019 that he left his union, the GMB, when he obtained new employment in November 2015, approximately 6 months after the claim was commenced in the Tribunal. He has said that he had no contact with them from that point. The Claimant did not inform the Tribunal that he was no longer represented by the union and, accordingly, communications continued to be sent to the GMB on his behalf.
6. On 10 May 2017, an 'unless order' was sent to the GMB as a result of failures to comply with case management directions regarding the service of a Schedule of Loss and disclosure. Time was extended until 21 June 2017 for compliance but the Tribunal was informed that the GMB could not make contact with the Claimant. A Judgment was then sent on 26 June 2017 and, even though the GMB was still on record as representing the Claimant a copy of the Judgment was sent to his last known address at Manchester Road (although it now transpires that the Claimant moved house in June 2016).
7. The Claimant did not contact the Tribunal to inquire about his claim once we lost contact with his union having changed job in 2015. Further, he failed to notify the Tribunal of his change of address. The ‘unless order’ and Judgment were sent out correctly. It is not the Tribunal's job to ensure that communications between the Claimant and his representatives remained effective. If he complains that the GMB failed to take any or any sufficient steps to protect his interests in the claim, that it a matter which he should raise with them.
8. In these circumstances, it is not appropriate to extend time to enable the application to be considered so late. Further or alternatively, even if the

application was considered on its merits, in the absence of any evidence suggesting that the Claimant has remedied the defaults which led to the 'unless order', the application would have no reasonable prospect of success as it is not in the interests of justice for the Judgment to be varied or revoked.

Employment Judge Livesey
Dated 14 March 2019

Judgment sent to Parties on

15 March 2019

For the Tribunal Office