EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr C Marques	and	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 16 August 2017 which was sent to the parties on 16 August 2017. The grounds are set out in his application of 7 and 12 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 letters of 7 and 12 March 2019 that he left the GMB union in July 2018, nearly a year after the Judgment was entered. That Judgment was sent to the Claimant at his address at 112 Salisbury Street, which is where the correspondence of 26 June 2017 and the strike out warning of 31 July 2017 also went. The Tribunal had no way of knowing that he might have moved from that address.

6. The Claimant has complained that his union have apparently not acted upon information that he sent regarding his change of address. If the GMB have failed to take any or any effective steps to protect his position within the proceedings, it is a matter which he ought to take up with them. It is not for the Tribunal to ensure that effective communication is maintained between a party and his/her representatives. The warning and the Judgment can therefore be regarded as having been validly served and sent. Further, there is no indication from the Claimant that the failings which led to the strike out warning have been remedied.

7. 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 warning, 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.

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Employment Judge Livesey
Dated 14 March 2019

Judgment sent to Parties on

15 March 2019

For the Tribunal Office