EMPLOYMENT TRIBUNALS

Claimant: Miss N Carruthers

Respondent: Mr M Heskett-Saddington

JUDGMENT

The claimant's application dated 28 June 2018 for reconsideration of the judgment sent to the parties on 14 June 2018 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

The Law

1. 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……

2. The 2013 Rules only 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.

3. 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".

4. 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".

5. 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").*

Discussion and findings

6. Where a party fails to appear at a hearing, either in person or through a representative, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, the Tribunal will consider any information that is available to it, after any enquires that may be practicable, about the reason for the party's absence.

7. In summary, the Claimant states that she does not understand that the only evidence to disprove her claim was word of mouth of the Respondent. With respect to the Claimant, her claim was not dismissed because of that. The clerk of the Tribunal had attempted to call her but there was no reply. She claims that she noticed she had received a call from the Tribunal but did not return it because she believed that the Tribunal would only accept an email from her. The Tribunal waited until 13:00 to see if the Claimant would attend. The Claimant had ample opportunity to contact the Tribunal and she could have telephoned the Tribunal particularly as she admitted in her email of 28 June 2018 that she noted she had a missed call from the Tribunal. The fact that the Tribunal telephoned her meant that she knew or ought to have known that she could have returned the call rather than simply sending an email to the Tribunal. I dismissed the appeal under Rule 47.

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Employment Judge A.M.S. Green

Date 16 July 2017