Case number: 2601208/2018

EMPLOYMENT TRIBUNALS

BETWEEN:

Mr M Kutrzeba		Travis Perkins PLC (1)
Claimant	and	BSS Group Limited (2)
		Respondents

Consideration of Application for Reconsideration

Held at: In Chambers

Before: **Employment Judge R Clark**

DECISION

1. The Claimant's application for reconsideration of the tribunal's judgment is refused.

REASONS

1. By an email dated 8 May 2019, the claimant presented an application for reconsideration of my judgment given ex tempore on 7 March 2019 and sent to the parties in writing on 9 March 2019. Written reasons were subsequently requested and sent to the parties on 24 April 2019.

2. The judgment relates to a hearing in which the issue for me to determine was that of jurisdiction. I concluded that neither of the tests for extending time were engaged in this case. I concluded it was not just and equitable to extend time for the presentation of the discrimination claims. In relation to the dismissal and other claims, I concluded firstly that it was reasonably practicable for the claim to be presented within the primary time limit.

Alternatively, if I was wrong and it was not reasonably practicable, that the further period of time that elapsed before it was in fact presented was not itself a reasonable further period of time.

3. An application for reconsideration falls to be considered under rules 70-72 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's application is made in time. Whilst it does not explicitly set out why it is necessary, by its general nature it may be interpreted as setting out broad grounds by which the claimant believes I should have reached a different conclusion.

4. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. There is a single threshold for making an application, that is, that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision were allowed to stand.

5. The structure of the claimant's application is to draw on aspects of, or conclusions within, my reasons as a basis to advance his case. As far as I can see, those points in substance were advanced during the hearing. I note that a new argument is advanced that s.207A of the Employment Rights Act 1996 was engaged as a result of the claimant's separate legal proceedings in respect of his wife removing their children from the jurisdiction (Extension of time limits because of mediation in certain cross-border disputes). That provision is not engaged in this case. Whatever the application of the underlying EU directive to the family law matters, the parties to *this* civil dispute are different and they were not engaged in cross border mediation. It does not assist the claimant.

6. The challenges raised by the claimant do not appear to amount to anything more than inviting the tribunal to take a second look at the evidence and asserting that I should have arrived at a different conclusion. The requirement for finality of litigation means such a "second bite of the cherry" is not in itself something which engages the interests of justice such that a reconsideration would become necessary. However, if the interests of justice were engaged, by rule 71(1) I would be required to give initial consideration to the prospects of the application and this process would also determine, firstly, whether it was necessary to seek the views of the respondent and, secondly, whether the matter could be dealt with on paper or at a further hearing. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I *shall* refuse the application without being required to consider the matter further.

7. In my judgment there is no reasonable prospect of the decision being varied or revoked. I have viewed this application through the prism of the same sympathy for the claimant's

circumstances throughout 2017, as I expressed in my reasons at the time. If I had felt the law permitted me to apply the “not reasonably practicable” test to extend time I would have done so. I did not conclude that either limb of that test enabled me to do so. I am satisfied that the findings of fact were facts I was entitled to reach on the evidence presented and that it is those facts lead to the conclusion already given.

8. Consequently, I refuse the application for reconsideration.

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Employment Judge R Clark
Date: 24 May 2019

JUDGMENT SENT TO THE PARTIES ON
30 May 2019

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS