



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**  
Mr A Kieran

**Respondent**  
AND Prime Education and Training Limited  
Trading as Kings Bournemouth

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD IN CHAMBERS AT** Plymouth      **ON**      10 June 2019

**EMPLOYMENT JUDGE**    N J Roper

### **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

**The judgment of the tribunal is that 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 Deposit Order dated 9 April 2019 which was sent to the parties on 15 April 2019 ("the Deposit Order"). The grounds are set out in his email letter dated 25 April 2019. That letter was received at the tribunal office on 25 April 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 within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
  4. The background to the case is as follows. A case management preliminary hearing was listed to be heard by telephone on 9 April 2019. The parties were notified that they were required to telephone in to attend the hearing and they were provided with the relevant telephone number. The claimant failed to attend that hearing. The respondent did attend that hearing. Having considered and discussed the claimant's claims I formed the view that they had little reasonable prospect of success on their merits, and in any event appeared to have been presented out of time. I therefore made the Deposit Order.
  5. The claimant sent an email to the Tribunal office dated 25 April 2019 which has been treated as an application for reconsideration of the Deposit Order. The claimant suggests that he was out of the country and unable to make the telephone call to attend the hearing, or alternatively was not informed that he had to make a telephone call, and was expecting the same. He also concluded by saying "I accept the findings". By subsequent email on 3 May 2019 the claimant confirmed that he was unable to pay the deposit and wanted legal aid to assist him to pursue his claim. The Tribunal is a statutory body which is unable to advise parties, and cannot provide legal aid.
  6. The claimant has given no information as to why the claims should have been considered to have been brought within time. In addition, the claimant does not apparently seek to suggest that the Deposit Order should be reconsidered because it is in the interests of justice to do so, but even if he does so the law which applies is as follows.
  7. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls 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".
  8. More recent case law suggests that the "interests of justice" ground 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). This requires the tribunal to give effect to the overriding objective to deal with cases 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 confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.
9. In this case I remain of the view that the claimant's claims enjoy little reasonable prospect of success, and in any event appeared to have been presented out of time. The Deposit Order was made bearing in mind such information was as was available from the claimant, who failed to attend the telephone hearing. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Deposit Order being varied or revoked.

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Employment Judge N J Roper  
Dated 10 June 2019