EMPLOYMENT TRIBUNALS

Claimant: **Mrs W Lynch**

Respondent: **HELP-LINK UK Ltd**

Heard at: **Leeds**

On: **7 & 8 March 2019**

Before Employment Judge Dr E Morgan

JUDGMENT

Upon Application for Reconsideration
Pursuant to Rule 70

The Application

1. By application dated 28 March 2019, the Claimant applies for reconsideration of the Judgment with reasons promulgated on 15 March 2019.

The Respondent's position

2. The Respondent objects to the application on the ground that the Claimant has not identified any error of law and/or the matters raised are already addressed in the course of the reasons previously issued by the Tribunal.

Jurisdiction

3. Rule 70 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 Schedule 1 provides as follows:

"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 original decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

4. Where the Employment Judge considers the application lacks any reasonable prospect of success, he is entitled to dismiss the application, informing the parties in writing. However, in the present case, the parties are in agreement that the application may be disposed of on paper, without the need for a hearing.

5. As the terms of rule 70 make clear, the sole ground for reconsideration is encapsulated in the phrase: "interests of justice". This threshold anticipates and requires the identification of grounds which, if well-founded, have the potential to impact upon the original judgment and the findings contained within it. It follows that dissatisfaction on the part of a particular litigant is not enough. As presently formulated, the rule therefore requires the Tribunal to satisfy itself that it is appropriate in the instant case to exercise its discretion so as to disturb the terms of the original judgment. However, it is equally apparent that Rule 70 may be invoked in the event of an error of law, procedural irregularity or procedural slip.

Discussion and Conclusions

6. In the interests of both brevity and clarity, the grounds upon the Claimant relies in support of her application appear in italicised form in what follows.

Ground 1

*Paragraphs **7.18 to 7.19**. The Tribunal has not addressed the issue on whether the provision of ID cards "to all personnel" employed and self-employed, is a fetter on substitution clause as set out in the contract.*

7. In support of this ground, the application refers to paragraphs 83 and 84 of the judgment in Pimlico Plumbers v Smith. In short, it is suggested that the Tribunal judgment does not address the means by which the issue of substitution could be achieved. It is said that it was the Claimant's case that she was not entitled to provide a substitute and, *impliciter*, she was precluded from doing so by reason of the practice concerning ID cards.

8. In response, those acting for the Respondent point to paragraph 7.18 of the Judgment in which the Tribunal found that ID cards were issued to both self-employed and employed personnel. The Respondent also points to the evidence adduced before the Tribunal on this issue, namely: that the ID Cards were not issued for mandatory use.

9. The Tribunal has reminded itself that upon the preliminary hearing, the Claimant submitted there was no right of substitution at all following January 2015. Whilst the ground of application is confined to paragraphs 7.18 and 7.19 of the Judgment, the Tribunal's consideration of this issue was not confined to those paragraphs. As noted in paragraph 7.10, the Claimant had read and considered the terms and conditions which she had agreed to at various stages during the course of dealing between the parties. As noted in paragraph 7.13, both under the Hudson scheme and the later direct arrangement with the Respondent, the opportunity to conduct interviews was confined to pre-arranged appointments; scheduled and nominated by direct communication between the Respondent and a domestic client. An iPad or Tablet device was provided for this purpose. The Tribunal has made a clear finding to the effect that the Claimant was not obliged to undertake the appointments [e.g. 7.15, 7.17, 7.19, 7.23]. The right of substitution was not challenged by the Claimant in relation to the period 2011 to 2015 when drawing upon the services of Hudson.

10. The right of substitution was found to be a common component in the course of dealing between the Claimant and the Respondent in the period January 2015 to January 2018 [see paragraph 7.25]. As noted on behalf of the Respondent, ID cards were issued to both employees and self-employed alike. As identified in paragraph 44, these terms accurately reflected the commercial dealings between the parties and the realities in which they participated. This included the right to nominate others [see paragraph 45.3-45.5]. There was clear evidence before the Tribunal [paragraph 7.19] that there was communication between colleagues and opportunity for self-employed personnel such as the Claimant to withdraw and/or exchange, or, simply exclude appointments. This evidence was not challenged.

11. In the view of the Tribunal (as is apparent from the Tribunal's findings when read as a whole) the purpose and provision of ID cards did not impede the exercise of these rights. Any substitute would, of course, require access to the information electronically provided to the Claimant. It was no part of the Claimant's case that this information could not be provided or shared.

Ground 2

Paragraph 45.1. The Tribunal has not addressed the issue of whether there was an Umbrella contract, for example see Paragraph 113 Court of Appeal Judgment in Pimlico Plumbers.

12. The Respondent contends that this matter was the subject of detailed argument and rejected by the Tribunal. The Respondent points to paragraphs 35.2-35.8 of the Judgment as an adequate exposition of the law.

13. In the view of the Tribunal, the Judgment issued to the parties adequately details the conclusions reached and the reasons for them. As the Senior Courts have made clear, Tribunal judgments are to be read and considered as a whole. In the current case, the reading of the judgment confirms that the nature, character, authenticity and efficacy of the contractual terms adopted between the parties have been considered and assessed. Those terms and conditions (signed by the Claimant) were not the subject of targeted challenge. Rather, it was the Claimant's case that she had not read or considered the documents signed by her and, in any event, they did not capture the commercial realities of the relationship in which she considered she participated.

14. The Tribunal properly directed itself to the law (as identified by the parties) and has applied those same principles to the findings on the evidence before it. The Tribunal has concluded that the Claimant understood the terms which were being proposed for adoption [paragraph 7.10 and 7.23]. It has confirmed the Claimant was not subject to an obligation to carry out work [paragraphs 7.15, 7.17, 7.23] and periodically exercised her rights in this regard [paragraph 7.24]. As noted by the Tribunal [paragraph 7.25] these terms obtained throughout the period of direct transacting with the Respondent.

15. There was no necessity for the Tribunal to imply any alternative contractual arrangement [paragraph 35.3]. In consequence, the Tribunal was entitled, if not required, to construe the contractual documentation adopted by the parties. It did so [paragraph 36-39, 41-42 and 43-45]. As the findings of the Tribunal make clear, these arrangements resulted in the adoption of standard terms and conditions which regulated the course of dealing between the parties. The course of dealing gave rise to separate and discrete occasions upon which the Claimant chose to participate in the work in question.

Ground 3

The Tribunal has not addressed the issue of whether the Claimant was in a position of subordination and whether the Claimant was an integral part of the Respondent's business or whether she was in business on her own account – Paragraph 116 Court of Appeal Judgment in Pimlico Plumbers

16. As will be evident, the third limb of the application asserts a failing on the part of the Tribunal to consider and determine whether the Claimant was an integral part of the Respondent business, or, was trading on her own account. Reference is made to paragraph 116 of the Court of Appeal Judgment in Pimlico for this purpose.

17. On behalf of the Respondent, it is contended that the status of the Claimant has already been addressed in terms which did not require further analysis of the integration issue.

18. In the view of the Tribunal, paragraph 116 of the Court of Appeal Judgment cannot be read in isolation. As the preceding paragraphs make clear, the Court of Appeal was conducting an exposition of the findings of the Employment Tribunal and its analysis of the contractual terms adopted between the parties, their efficacy and commercial reality in that case. It was for this reason that the Tribunal reconsidered the issue of classification of the relationship as a whole.

19. In any event, and as made clear within the course of the previous judgment, the Tribunal has engaged with the authenticity and reality of the terms and conditions adopted in this case. It has detailed its findings accordingly. In short: those terms and conditions reflected the commercial realities of their transactional dealing. The judgment properly details the conclusions reached and the reasons for them. More fundamentally, whilst the Tribunal has not used the terminology adopted in paragraph 116 in *Pimlico*, its conclusions and analysis make clear that the reality of the relationship between the parties was nonetheless subjected to scrutiny in a manner consistent with the approach endorsed by the Court of Appeal.

Conclusions

20. In the light of the above, the Tribunal is satisfied that the interests of justice do not require reconsideration of the Judgment.

21. Accordingly, the application is refused and is dismissed.

Employment Judge Morgan

10 July 2019