EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms O Akinleye (1) & Mr A Olumade (2)	AND	Basingstoke and Deane Borough Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT SOUTHAMPTON ON 16 September 2019

EMPLOYMENT JUDGE GRAY

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Claimants' application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimants have applied for a reconsideration of the judgment dated 20 August 2019 which was sent to the parties on 28 August 2019 ("the Judgment"). There are three attachments to their email to the Tribunal dated 10 September 2019, although it is the Preliminary Judgment Reconsideration document (consisting of 5 pages including a cover sheet) that appears to contain the Claimants' reasons for applying for the reconsideration.

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 grounds relied upon by the Claimants appear to be in broad terms:

    a. That the Claimants should have been allowed to cross examine Mr Draper and Mrs Tatum at the preliminary hearing.

    b. That certain findings of fact as to continuing acts and the knowledge of the Claimants were wrongly made.

5. On reviewing the grounds of reconsideration and the documents submitted by the Claimants, they appear to be adducing the same evidence, with supplemental submissions. However, they do not in my view disturb the findings of fact that I have already made, which were key to the decision I reached. Further, the complaints the Claimants have with Mr Draper and Mrs Tatum have been permitted to proceed to final hearing, so they will have opportunity to challenge their evidence at that stage.

6. 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".

7. 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.

8. I have also noted **Lindsay v Ironsides Ray & Vials [1994] ICR 384**, where Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.

9. In my judgment, these principles are particularly relevant here.

10. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Gray

Dated: 16 September 2019

Judgment sent to Parties: 17 September 2019

FOR THE TRIBUNAL OFFICE