EMPLOYMENT TRIBUNALS

Claimant: **Alan Light**

Respondent: **Comeytrowe Equestrian Limited**

Before: **Employment Judge Bax**

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 Judgment dated 20 August 2019, which was sent to the parties on 4 September 2019 ("the Judgment"). The grounds are set out in his e-mails dated 24 August 2019 and 30 September 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. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

4. 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.

5. The grounds relied upon by the Claimant are these:

    a. The case was due to be heard by a Judge and members, but was heard by a Judge sitting alone.
    b. The Judge failed to take into account the reported offence of fraud and only considered whether there was a failure to abide by a legal obligation.
    c. The Claimant's words had been changed.
    d. The Judge referred to the Claimant having provided an example and that his individual situation was not in the public interest.
    e. The Claimant referred to the offences being in the public interest. The offences came under S. 4 of the Fraud Act 2006 and were disregarded.
    f. When determining which disclosures would be subject to the legal tests, the Judge unjustly questioned the Claimant's right to rely on the disclosure to Mrs Neald and influenced his decision not to include it in his claim.

6. In *Trimble-v-Supertravel Ltd* [1982] ICR 440, the Employment Appeal Tribunal decided that, if an issue had been ventilated and argued before a tribunal at a hearing where there was no procedural mishap, then any error of law fell to be corrected on appeal and not by review, or reconsideration as it is now. Although the current approach to the newer rule 70 is broader, it is inherently unlikely that a tribunal will be prepared to reverse a decision simply because a party asks for it to be reconsidered, unless there is something which renders the issue substantially different from when it was dealt with by the tribunal on the first occasion.

7. The interests of justice would clearly be best served by the correction of mistakes by way of reconsideration applications, rather than a full appeal and the Employment Appeal Tribunal has more recently emphasised that rule 70 contains a broad power (*Williams-v-Ferrosan* [2004] ICR 607 and *Maresca-v-Motor Industry Repair Centre* [2005] ICR 197), which can also include the re-opening of issues in situations in which fresh evidence has come to light (*Korashi-v-Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4). However, in *Fforde-v-Black* EAT 68/60 the EAT stated that the interests of justice did 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*". It also has to be remembered that it is in the public interest that there should be finality in litigation, and the interests of justice applies to both sides.

8. Each of the grounds of the application have been considered as follows:

The case was due to be heard by a Judge and members, but was heard by a Judge sitting alone.

9. The claim brought by the Claimant was that he had been automatically unfairly dismissed for making a protected disclosure. Members are only required to sit in claims of detriment for making a protected disclosure and in cases of unfair dismissal only an Employment Judge shall sit alone, therefore the Tribunal was properly constituted in accordance with S4(2) and S. 4(3)(c) of the Employment Tribunals Act 1996. Neither party objected to the Judge sitting alone.

The Judge failed to take into account the reported offence of fraud and only considered whether there was a failure to abide by a legal obligation.

10. Whether or not the disclosure related to a criminal offence was considered and the Claimant is referred to paragraphs 13, 18 and 25 of the Judgment.

The Claimant's words had been changed.

11. The Claimant says that the words he used to describe the situation if more children were involved were changed from what he used (subject to massive public scrutiny) to (in the public interest) and he honestly believed that he was reporting an offence in the public interest as the offences themselves were in the public interest. When it was suggested to the Claimant that the matter seemed to relate to him personally and his child, his reply was that if there had been more than one it would be in the public interest because there would be massive scrutiny. The test to be applied in relation to whether the Claimant had a reasonable belief that the disclosure was in the public interest is a mixed objective and subjective test. Applying that test, after hearing the evidence, it was concluded that the Claimant did not have a reasonable belief that it was in the public interest (see paragraph 27 and 28 of the Judgment).

The Judge referred to the Claimant having provided an example and that his individual situation was not in the public interest.

12. What the Claimant said in oral evidence and in his submissions was taken into account when making the decision. Findings of fact were made on the basis of the balance of probability.

The Claimant referred to the offences being in the public interest. The offences came under s. 4 of the Fraud Act 2006 and were disregarded.

13. The Claimant did not refer to s. 4 of the Fraud Act 2006 during the hearing, however the claim was understood and considered on the basis that the disclosure related to a criminal offence. See paragraphs 13, 18 and 25 of the Judgment.

When determining which disclosures would be subject to the legal tests, the Judge unjustly questioned the Claimant's right to rely on the disclosure to Mrs Neald and influenced his decision not to include it in his claim.

14. The issues were discussed with the parties at the start of the hearing and the Claimant was asked to confirm upon which disclosures he relied, and he confirmed that he only relied upon the disclosure made to the police. It was necessary to determine which disclosures were relied upon in order to identify what the Respondent had to respond to and to identify issues to be determined. In any event, after hearing the evidence and before adjourning to make the decision, the Claimant confirmed that he was not relying upon the disclosures to Mr and Mrs Neald on 1 December 2018 and 21 December 2018 because they had not been made in the public interest.

15. 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.

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Employment Judge Bax
Dated 10 October 2019