EMPLOYMENT TRIBUNALS

Claimant: Barbara Komorowska

Respondent: Woodland Healthcare Ltd

Heard at: **Exeter** **On:** **02 January 2020**

Before:

Representation

Claimant: None
Respondent: Application by email

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the respondent'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 reserved judgment dated 21 October 2019 which was sent to the parties on 31 October 2019 ("the Judgment"). The grounds are set out in the respondent's director's email dated 06 November 2019. The delay in dealing with the request is partly because it was framed as a judicial complaint, and so was passed to the Regional Employment Judge to deal with. On 19 November 2019 the respondent's director stated that she wished the matter dealt with as a request for a 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 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 claimant are set out at length in the email of 06 November 2019. The respondent's director states that:

    a. The hearing date of 04 October 2019 was not known to them.
    b. They had received a hearing date of 18 October 2019 but had asked that it be changed, so that the director could travel from Leeds.
    c. On 03 October 2019 the respondent was contacted by the Tribunal by email was 1pm on 21 October 2019, at 2pm.
    d. On 04 October 2019 the time was changed to 10am.
    e. The director called the Tribunal on the telephone and asked that a judge reconsider the time.
    f. A letter from the Tribunal was not read as it sent to the the company's administrator who was on holiday and the former workplace of the claimant ("the Home"), who did not pass on the information. The director presumes the letter was sent to the Home as the Tribunal noticed she was away (presumably from an "out of office" acknowledgement.)
    g. At 4pm on 18 October 2019 the director was notified that the hearing would be in Plymouth, not Exeter, which was even further from Leeds. She says she requested a change immediately as she could not do this journey in 1 day.
    h. At 5:32 pm that request was refused by email, but everyone in the office had gone home by then. The director was unaware of the email until 8:08am on the morning of the hearing when it was too late to get to the hearing anyway.
    i. She responded (on the day of the hearing, to say that she had personal care responsibilities for her husband, which ruled out overnight stays).
    j. She indicates that she said she thought that I had set out to mislead in the judgment to justify what she described as my lack of consideration and respect for the respondent.
    k. She also objects that the judgment calculates 1 month's notice, and the contract did not, she says, so specify. It was 1 week for each full year, and so it should be 3 weeks not one month.

5. All but the last 2 headings relate to the date and time of the hearing. It is not for a respondent to expect that a hearing will be altered at their

request. My only involvement was to ask that the hearing be listed for 10:00 am not 2:00pm, because I considered that it was unwise to make it only a half day, as that involved a risk of going part heard that would be unlikely to arise if the hearing was at 10:00. I was not made aware of the reason the director of the respondent sought a 2pm start time, but it would have made no difference if I had been told. There was no reason why Counsel could not have been retained, or at the very least written submission sent.

6. It is not the Tribunal's fault that the respondent made no efforts to have the administrator's emails monitored in her absence, nor that the respondent does not appear to have any email monitoring mechanism, or that even if it does not the director simply switched off her emails on Friday before 5:30pm, knowing that there was a hearing on Monday following, listed at 10:00am.

7. For these reasons I do not consider that holding the hearing on the set date is a reason why the matter should be reopened.

8. In addition the reason to reconsider a judgment is the interests of justice, and the director of the respondent gives no reason why it is felt that the judgment is in any way unfair or unjust, save only for the notice period awarded, which was 1 month, and not the 3 weeks asserted by the respondent.

9. I do not consider that has any prospect of success as an argument, because the claimant was always paid monthly. Accordingly in practice the contract was a monthly contract and a month is therefore the correct notice period to which the claimant was entitled.

10. 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 68/60 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".* This is not the case here. In addition it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.

11. 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 Housego
Dated 01 January 2020