EMPLOYMENT TRIBUNALS

Claimant: Mr M Vella

Respondent: Automobile Association Developments Ltd

Heard at: **Bristol (decision on paper)** **On:** **23 March 2020**

Before: **Employment Judge Midgley**

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 five February 2020 which was sent to the parties on 12 February 2020 ("the Judgment"). The grounds are set out in his letter dated 23 February 2020 2013. That letter was received at the tribunal office that days it was sent by email.

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 judge treated case with complete bias towards the AA….The Judge unfairly allowed the preliminary hearing to go ahead when the AA's final response was presented to us list and 17 hours earlier."
    b. Mr Swan had not left the respondents employment under a cloud, and therefore there was less prejudice to the respondent if the claimant permitted out of time.

6. In relation to the first ground, it was not suggested by the claimant or his representative, Mrs Long, either that the claimant had insufficient time to respond the respondent's skeleton argument, that the hearing should not proceed or, critically, that the Employment Judge was biased in his approach in permitting the case to proceed.

7. As the judge explained to Mrs Long at the hearing, ultimately, the question of whether or not the claims were brought in time was a matter for the Employment Judge to determine on the evidence which was given by Mr Vella, and the respondent's arguments which were set out in a skeleton argument were no more than arguments, they were not evidence.

8. The Employment Judge is satisfied that the claimant was able to give evidence (and subsequently to be re-examined by Mrs Long) in relation to all matters that were relevant to the timing of the presentation of his claim and his knowledge of the applicable time limits. The matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision. 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.

9. Insofar as the evidence relating to Mr Swan is concerned, the difficulties in the respondent calling Mr Swan were a factor in the decision that the balance of prejudice did not favour extending time to enable the claimant to present the claim within time, because it was understood that Mr Swan was less likely to support the respondent as he had left the respondents employment under a cloud. However, a secondary point of equal if not greater importance was the ability of Mr Swan to recall the reasons for his

actions in relation to events that occurred in some instances some six years prior to the claim, but certainly would be likely to be six years prior to any hearing.

10. 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 am not persuaded by the claimant's application that something has gone radically wrong with the procedure or that there has been any denial of natural justice or something of that order. Therefore, 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 Midgley
Dated 23rd March 2020
……