EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Antill	and	Transitgt.com Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Respondent has applied for a reconsideration of the Judgment dated 24 April 2020 which was sent to the parties on 28 April 2020. The grounds are set out in its application of 11 May 2020.

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 just inside the relevant time limit.

3. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell 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". More recent case law has suggested that the test 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) in order to ensure that cases are dealt with 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 stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

Relevant background

4. The Claim Form was issued on 17 October 2019; the Claimant sought a redundancy payment, unpaid holiday pay and unpaid wages and complained that he had not been provided with written terms of his employment and/or payslips. The Respondent was served with a copy and informed that its response was due on 17 December 2019.

5. A handwritten response was received in the building on 18 December 2019 (it was date stamped at the County Court desk and by the Employment Tribunal staff on the same date). It was therefore out of time and was rejected on 30 December 2019. That rejection letter contained an explanation as to the Respondent's possible alternatives; an application for reconsideration and/or an appeal.

6. The Respondent remained silent and, on 10 January 2020, the Tribunal listed the matter for a remedy hearing on 24 April 2020. The Respondent was notified of that hearing and, again, it remained silent.

7. On 21 April, the hearing was converted into a hearing by telephone as a result of the Covid-19 pandemic. Again, the Respondent was notified but the Respondent's Accounts Manager, Ms Angove, did then write; she stated that she would need legal assistance and that she would be unable to attend the hearing. She appeared to suggest that she had not received the Tribunal's emailed letters of 30 December 2019 and 10 January 2020. They were re-sent to her.

8. Ms Angove wrote again on 22 April on a 'without prejudice' basis; she asserted that she had not received either of the letters of 30 December 2019 or 10 January 2020, although she claimed that they had not been received "*to my business premises*", which they would not have been since they were emailed. She further stated that the Response had been "*sent out over the 28 days allowed*". She stated that she wished to appeal

but that she could not attend on 24 April without her solicitors as her representatives.

9. The Respondent was notified within two hours (an email sent at 13:02) that, if it wished to make an application for an extension of time for the Response to be accepted out of time, it would need to provide a telephone number "*by return of email*". Nothing further was heard from the Respondent thereafter.

10. At the telephone hearing on 24 April, the Respondent did not attend. Two attempts to dial out to the telephone number that was already held on file failed. As stated above, no further number had been given. The Claimant gave evidence in support of the Schedule of Loss which had been served. His solicitor made further submissions and judgment was entered.

The application

11. The Respondent, through Ms Angove, who now describes herself as a 'Director', has asserted that it was not represented at the hearing and now believes that it should have been. It had known of the hearing date since 10 January 2020 and had clearly indicated that it was not going to attend without representation, as stated above. It failed to react to the Tribunal's letter of 3 December 2019 and its email of 22 April 2020. The application has not addressed many of the other points made above concerning its failure to file a Response on time and engage in the process until it was too late. It was interesting to note that it no longer seeks to claim that it did *not* receive the Tribunal communications of 30 December and/or 10 January as previously suggested.

12. In respect of the actual sums awarded, the Respondent has complained that the award was made in respect of unauthorised deductions from wages was incorrect and the Claimant's salary never increased from £40,000 to £50,000 as claimed.

13. Not only did the Claimant give evidence about the agreement for the increase, but his email to Mr Angove dated 6 December 2017 evidenced their agreement to that effect. Yet further, and most importantly, the Claimant's payslips showed the increase, albeit in July 2017, not December 2016 as it should have done (basic pay jumped from £769/week to £961/week and stayed at that level). The Claimant was not, however, actually paid at that rate, hence his claim and the award.

14. The Respondent has now alleged that the payslips were corrected retrospectively to £40,000 per annum from 1 April 2018. They have not been provided. Ms Angove also stated that there *had* been a discussion about an increase in pay to £50,000 per annum if certain contingencies were met. Because the Claimant did not achieve that which was required,

she said, the promotion and pay increase never took place but the Claimant had asked the accountants to change his payslips. Ms Angove stated that she has a written declaration from the Director of the accountancy firm to that effect, which was not provided.

15. It is important to note that the account summarised above did not appear within the draft Response that was submitted out of time. In fact, the draft appeared inconsistent with the application for reconsideration in several respects; for example, it was alleged the Claimant's salary was '*never agreed at a higher amount*', whereas it is now claimed that an increase *was* agreed but was never put into effect because conditions were not met.

16. As to the redundancy payment, although Ms Angove has disputed it, paragraph 2 of the application effectively indicates that the Claimant *was* redundant since his position "*was no longer* viable" and "*there was no position atTransitgt.com Lt suitable to Simon's skill set.*" The draft response also conceded that a redundancy payment of some sort was due but still remains unpaid.

17. As to the claim of unpaid holiday pay, the Claimant was awarded 6 days' pay. The Respondent now asserts that he had taken more holiday than he was owed according to Ms Angove's records (not provided) whereas the draft response had 6 days pay, albeit at a lower rate of pay. The Respondent seems to be at a loss in respect of the provision of written terms and conditions.

Conclusion

18. The application for reconsideration pursuant to rule 72 (1) is refused. For the reasons given above, the Respondent's account is suspicious, absent from and/or inconsistent with the draft response, is unsupported by the claimed written evidence that the Respondent has obtained and appears inconsistent with the documentary and clear oral evidence given at the hearing. Further, the Respondent has still failed to explain why it failed to file a response in time and why it then failed to engage in the process leading up to and including the Remedy Hearing despite the Tribunal's encouragement.

19. Accordingly, the application has no reasonable prospect of succeeding and is dismissed.

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Employment Judge Livesey
Dated: 28 May 2020