



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr J Bennetts

AND

Respondent

The Trustees of St Just Free Church

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON**

13 July 2020

EMPLOYMENT JUDGE N J Roper

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 27 February 2020 which was sent to the parties on 3 March 2020 ("the Judgment"). The grounds are set out in a detailed document running to 52 paragraphs which was attached to the claimant's email dated 30 June 2020. The claimant had earlier indicated on 28 April 2020 and 24 June 2020 that he intended to present an application for reconsideration, but his application was not received at the tribunal office on until 30 June 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 well outside of 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. Although the claimant refers to the fact that the tribunal had granted the respondent an extension of time for complying with directions because of reasons relating to the Covid-19 pandemic, the claimant does not explain why his application for reconsideration could not have been presented in time and/or otherwise earlier.
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: (i) that he disagrees with the factual findings made in the Judgment, and that the respondent gave false evidence; and (ii) that he wishes to have reporting restrictions to protect his family. The claimant's email has given considerable detail in support of the first reason, but did not expand upon any application for reporting restrictions. To deal with that latter point first, no application was made under Rule 50 at the relevant hearing leading to the Judgment (at which the claimant was represented by Counsel). The claimant remains at liberty to make an application under Rule 50 in respect of the forthcoming full main hearing if he wishes, provided that he complies with the relevant Rules in so doing.
6. The hearing which led to the Judgment was a preliminary hearing in person on 27 February 2020 to determine whether or not the claimant was an employee of the respondent. The Judgment determined that the claimant was not an employee, and his claim for unfair dismissal and breach of contract were accordingly dismissed, but the Judgment also determined that he fell within the wider definition of "employment" in the Equality Act 2020 and thus his claims for harassment, direct discrimination, and indirect discrimination on the grounds of religion or belief were permitted to proceed to a full main hearing.
7. At the preliminary hearing the claimant was represented by Counsel. The respondent was also represented by Counsel. The claimant had the opportunity assisted by Counsel to cross examine the respondent's witnesses, and to challenge their evidence, and also to make closing submissions.
8. The claimant now complains that he discovered the day after the hearing that certain people had been referred to as Trustees of the respondent and had recently applied to the Land Registry to be removed as Trustees and that the respondent had therefore given false evidence as to the nature of its Trustees. He asserts that the sole remaining Trustee was a Mrs Bennett, whom he had been advised not to call on his behalf to give evidence. He has effectively applied for the majority the findings of fact and the Judgment to be amended in his favour because of the potential confusion as to who were the correct Trustees of the respondent.

9. However, the claimant was always at liberty to adduce such evidence as he chose to establish his disputed employment status, regardless of the exact identity of the respondent's Trustees. With regard to the findings of fact relating to the claimant's employment status, the matters now raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision.
10. 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".
11. 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.
12. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because (i) it was presented out of time, and (ii) there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge N J Roper
Dated: 13 July 2020

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