EMPLOYMENT TRIBUNALS

Claimant: **Ms A Lavelle**

Respondent: **Mark Cutter t/a Dice and Donuts**

UPON APPLICATION made by document dated 27 August 2019 to reconsider the judgment dated 13 June 2019 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that:

The respondent's application for a reconsideration fails.

REASONS

1. The claimant with a number of others brought claims to the employment tribunal for various claims relating to unpaid wages and holiday pay. The claims were subject to case management orders. The hearing took place at Manchester on 13 June 2019.The claimant was successful and judgment was sent to the parties on 28 June. I noticed an error in the arithmetic of the award which led to a certificate of correction being made the following day,14 June 2019 which was sent to the parties on 28 July 2019.

2. The claimants' representative put in a request for reconsideration in a document dated 27 August 2019. The claimant's views were sought and both parties were asked if they were prepared for the matter to be dealt with

in chambers. They were. Accordingly, the matter was listed for 13 February 2020.

3. Unfortunately, I was unable to attend the Tribunal that day. The case was due to be relisted but before it could, the pandemic struck and I was absent from the Tribunal.

4. I dealt with the matter in chambers on 18 June 2020. I apologise for the delay to the parties.

5. The Tribunal reminds itself of rule 70 schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The test for reconsideration under the 2013 rules is whether such a reconsideration is in the interests of justice.

6. I remind myself of the case law in **Outasight VB Limited v Brown [2014] UKEAT 0253.14**. This case confirms that the previous cases dealing with review under the earlier Tribunal rules remain applicable. The 2013 rules do not change the position. Accordingly, the "interests of justice" must be seen from both sides (**Redding v EMI Leisure Ltd EAT 262/81**). Reconsideration is not an opportunity for a "second bite of the cherry". There is also a public interest in the finality of litigation.

7. Where a party argues that new evidence has become available, it must be shown not to have been reasonably known or foreseen at the time of the original hearing.

8. I turn to the grounds relied upon by the respondent.

9. The main grounds relied upon by the Respondent are that he was unclear about the amounts being claimed by way of unpaid wages and holiday pay, that therefore there were documents on which the respondent wished to rely which he did not produce at the hearing and that such disclosure which was produced on the day made it difficult for him to manage the hearing because he has cerebral palsy.

10. He also suggests he had previously made an application to stay proceedings on the basis of his health and that he had not received documents from the claimants. He says he was told this would be heard on the day. He says that application was not heard on the day.

11. I remind myself that this case was subject to case management orders, sent to both parties which required them to prepare this claim for wages and holiday pay for hearing. I remind myself that as the employer, the respondent is responsible for keeping records of wages and holidays. I remind myself that both at the hearing and in response to the respondent's reconsideration application, Ms Lavelle maintains she sent her documentation to Mr. Cutter well in advance of the hearing but received nothing in response. I am satisfied Mr. Cutter did not engage in the process of discovery and exchange of documents in advance of the hearing.

12. At the hearing, the Tribunal arranged to copy documents Mr. Cutter wished to use, despite the fact it was the responsibility of the parties to bring the appropriate documents to the hearing.

13. The Tribunal is mindful it must make reasonable adjustments to enable parties with a disability to participate fully in proceedings. Mr. Cutter had the benefit of two other individuals to assist him at the hearing.

14. Mr. Cutter did not suggest his disability meant he was unable to participate fairly in the hearing. In fact at the hearing Mr. Cutter conducted the representation for the respondent.

15. Mr. Cutter did make an application for postponement which was considered carefully at the hearing and refused with reasons given.

16. Finally, the new evidence which Mr Cutter has now produced is clearly evidence which was in existence at the time of the original hearing. Producing evidence which could have been brought to the original hearing is not proper grounds for a reconsideration.

17. For all these reasons when considering the interests of justice from both sides, the respondent's application fails.

Employment Judge Ross

18 June 2020

JUDGMENT SENT TO THE PARTIES ON

16 July 2020

FOR THE TRIBUNAL OFFICE