EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs S M Popescu	AND	Homebazaar UK Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS **ON** 7 September 2020

EMPLOYMENT JUDGE GRAY

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 Respondent has applied for a reconsideration of the Judgment dated 6 May 2020 which was sent to the parties on 14 May 2020. Written reasons were provided to the parties on the 18 June 2020.

2. The Respondent's reconsideration application is attached to various emails from the 18, 19, 22 and 24 June 2020 (as well as delivering copy documents in person). It was acknowledged on the 25 June 2020 and the Claimant was asked for comments and the parties asked whether the application could be determined without a hearing.

3. By further correspondence to the parties dated 15 July 2020, the Respondent was chased for its response on the hearing question and an additional two questions were also put to the Respondent as part of this process, namely:

    a. If the Respondent says the Claimant was paid wages for holiday time she took when working for the Respondent, then when was this holiday pay paid, how much was paid, and for what period of holiday it covered.

    b. If the Respondent says it did supply particulars of employment (an employment contract) to the Claimant, then when it was supplied to the Claimant. The Respondent is to send a copy of what was supplied to the Claimant.

4. By email dated 20 July 2020 the Respondent confirmed in reply to these questions "We do not have any employment contract with Mrs S Popescu. I did not pay any holiday.".

5. There was then correspondence to the parties dated 17 August 2020 which stated … "A copy of the Respondent's email of 20 July 2020 is attached for the Claimant's attention. The Claimant is to provide their comments on the Respondent's email by 24 August 2020. The matter will then be referred to an Employment Judge for determination, unless either party objects and requests a hearing.".

6. As neither party has objected or requested a hearing it has now been referred to me for reconsideration without hearing, as such a hearing is not necessary in the interests of justice.

7. 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.

8. 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.

9. Noting the Respondent's response to the 2 questions (as set out above) and noting the Respondent's submission in support of the reconsideration application attached to its email dated 22 June 2020 in relation to the 10 days of accrued but unpaid holiday awarded to the Claimant …. "….Mrs. Popescu states that she has right for 10 days holiday. But, it should be

known that she used holiday between 14 August 2019 – 21 August 2019. The whatsapp communication of this holiday dates is sent to bristolet@justice.gov.uk on 5 May 2020 as evidence. This leaves a 5 days unpaid holiday and that amounts to £382.5 according to my calculation.". Since that submission, the Respondent has confirmed that, as well as acknowledging that it had not provided a contract of employment to the Claimant, it also has not paid the Claimant any holiday pay.

10. In view of these submissions and admissions the ground now relied upon by the Respondent for a reconsideration appears to be that it should have been found as fact that the Claimant was on a 2-day working week at the end of the employment relationship, not a 4-day working week.

11. This was a matter that was determined at the original hearing on the 6 May 2020 and it is recorded in the written reasons (paragraphs 18 to 22). At that hearing the Claimant confirmed under oath that at the point of termination of the employment she was still working 4 days a week. It was noted from the extract from the email of the Respondent in support of its position at that hearing that the Claimant worked 4 days in the first week of October 2019. The same email also included the following submission from the Respondent "…. October, I changed as a 2 days because my business was not good and I have to work myself. My shop is not big it is a kind of boutique and small cafe which has just 4 table for 10-12 people max. So I told her I am very sorry but I can give just 2 days and she accept it...". The Claimant confirmed in her evidence that contrary to what the Respondent had submitted she was not told her working week would be reducing from 4 days to 2. The Claimant confirmed that the Respondent had said to the Claimant on Friday 11 October 2019 that she would like to see the Claimant and discuss a matter, but did not confirm what. It was also found from the bank statements submitted by the Respondent as evidence, that the Claimant was paid for 4 days work (£306) for her penultimate week of employment on the 15 October 2019. This fits with what the Claimant says. Therefore, there was no evidence presented to me to support that the Respondent varied the Claimant's contract either by consent, or with notice, so that she was employed on a 2 day a week contract instead of a 4 day a week contract in October 2019.

12. On reviewing the grounds of reconsideration, the Respondent appears to be adducing the same evidence, with supplemental submissions. However, they do not in my view disturb the findings of fact that I have already made, which were key to the decision I reached. No documentary evidence has been presented to support that the Respondent varied the Claimant's contract either by consent, or with notice, so that she was employed on a 2 day a week contract instead of a 4 day a week contract in October 2019.

13. 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".

14. 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.

15. I have also noted **Lindsay v Ironsides Ray & Vials [1994] ICR 384**, where Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.

16. In my judgment, these principles are particularly relevant here.

17. 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 Gray

Dated: 7 September 2020

Judgment sent to Parties: 14 September 2020

FOR THE TRIBUNAL OFFICE