EMPLOYMENT TRIBUNALS

Claimant: **Miss D Powell**

Respondent: Mobili Office Limited

HELD AT: **Sheffield** **ON: 22 September 2020**

BEFORE: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that the claimant's application for reconsideration of the Judgement of 10 August 2020 has no reasonable prospect of success and is dismissed.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any Judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon the written record in question was sent to the parties. In this case, the written record of the Judgment of 10 August 2020 ('*the Judgment*') was sent to the parties on 28 August 2020. The claimant made an application for reconsideration of the Judgment on 10 September 2020. It follows therefore that her application for reconsideration was presented in time.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
5. If the Employment Judge considers that there is no reasonable prospect then the application shall be refused. Otherwise, the original decision shall be considered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon the initial consideration of such an application is to act as a filter to determine whether there is a reasonable prospect of the judgment in question being varied or revoked were the matter to go back to the Employment Judge at a reconsideration hearing.
6. On 10 August 2020, the Tribunal determined that the claimant did not have the necessary qualifying period of employment to pursue a complaint of unfair dismissal pursuant to section 94 of the Employment Rights Act 1996. The Tribunal also determined that the claimant's complaint that she was constructively dismissed for having made a protected disclosure and/or for a health and safety reason had no reasonable prospect of success, there being no evidence that the respondent acted in fundamental breach of the employment contract because of any protected disclosure and/or health and safety disclosure made by her in later November 2018.
7. In her letter of 10 September 2020, the claimant says that "*section 2 of the written Judgment indicates to me it was me who disclosed the protected disclosure, it was the company who disclosed it not me.*" This is a reference, presumably, to the fact of the claimant's criminal conviction.
8. The claimant is correct to say that, on her case, the respondent's management made a disclosure of the conviction to others and that the workforce then found out about it. However, the difficulty for the claimant is that on the assumption (without making a finding that this be the case) that the respondent's disclosure of the criminal conviction was a breach of the Rehabilitation Offenders Act 1974 the claimant is unable to pursue a complaint of constructive unfair dismissal because of that breach unless she has two years' qualifying service.
9. In so far as the complaint is brought as one of a breach of the implied term not without proper cause to act in a manner calculated or likely to destroy or seriously damage trust and confidence, then the claimant faces the same difficulty. Assuming in her favour that the respondent did disclose the fact of the conviction (whether or not spent under the 1974 Act) to others within the workplace and that is a breach of the implied term (and therefore a fundamental breach of the employment contract) then the claimant is unable to pursue that matter as a complaint of constructive unfair dismissal because she does not have two years of qualifying service.
10. The Tribunal did consider, at the hearing of 10 August 2020, whether the claimant was able to pursue complaints of automatic constructive unfair dismissal on account of having made protected disclosures and/or upon the grounds of a health and safety case. For the reasons given at the hearing of 10 August 2020 and as set out in the written reasons the Tribunal's conclusion

is that the claimant has no reasonable prospect of pursuing a complaint of automatic unfair dismissal.

11. No other grounds are advanced by the claimant in her letter of 10 September 2020 or in her email to the Employment Tribunal of the same date upon which basis for the Tribunal to reconsider the Judgment.

12. It follows therefore that there is no reasonable prospect of the being varied or revoked should a reconsideration hearing be held. The reconsideration application therefore fails and stands dismissed.

Employment Judge Brain

Date 13 October 2020