EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms N Ruban	and	(1) British Study Centres Limited
Limited		(2) Secretary of State for Business Energy and Industrial Strategy

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 2 October 2020 in respect of which Reasons were sent to the parties on 17 November 2020. The grounds are set out in her application of 17 November 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 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.

4. The Claimant's application appears to concern paragraph 2 of the Judgment of 2 October 2020 and, specifically, the dismissal of her complaint of unlawful deductions from wages relating to unpaid overtime and/or TOIL.

5. In paragraph 3.3 of the Reasons, the operative parts of the Claimant's contract of employment were cited. Conclusions in relation to the complaint of unlawful deductions from wages were set out between paragraphs 4.3 and 4.8; the claim failed because the contract did not allow the Claimant to recover any additional payment for hours worked in excess of her normal hours. It merely provided for an ability to take time off equivalent to that which had been worked in excess. The contractual position was supported by case law (paragraph 4.8).

6. The Claimant now asserts that she signed a new contract in March 2019 which contained different provisions. That contract has only come to light, she says, because it was uploaded as part of her mother's application for a UK visitors' Visa. She has also alleged that colleagues and her team were either "*paid or granted time off in lieu*".

7. In relation to the experience of her colleagues, it would not have been surprising if they had been allowed to take time off in lieu of overtime worked. That was what the Claimant's 2010 contract provided for. It might have been surprising if they had been paid for that time instead, but they may have worked under different contractual terms, the 2019 contract perhaps.

8. What was important to here was the contract which the Claimant worked under. Despite referring to the existence of a signed contract, the Claimant has not produced it. Further and more significantly, the Claimant gave specific evidence at the hearing on 2 October that, although a new contract was sent to her in 2019, she did not sign it because "*she had issues with it*".

9. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked on the basis of the Claimant's application of 17 November 2020.

_____
Employment Judge Livesey
Dated: 18 November 2020