EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Andrews	and	Asda Stores Ltd

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 and/or Case Management Summary and Order, both dated 27 November 2020. The grounds are set out in his applications of 7, 8 and 10 December 2020, the latter being the amended, final version.

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 points made in the Claimant's application are somewhat disjointed and will be addressed, where appropriate, in turn;

   4.1 Order that issues were dealt with at the hearing;
   The issue regarding jurisdiction (time) in respect of Claim 2 was addressed first because that was the first issue identified in the Regional Employment Judge's Order of 15 September 2020. The order in which the issues were addressed was of no consequence;

   4.2 'Preliminary call (15/09/20)';
   There was nothing implicit in the manner in which the Regional Employment Judge listed the hearing which suggested that the Claimant could have had the 'option' of paying a deposit instead of having the claim struck out. If the claim was issued out of time, the Tribunal had no jurisdiction to hear it;

   4.3 '4.Issues';
   The Claimant has suggested that the decision in respect of Claim 1 "*cannot be fully valid*" and that the conversations regarding it "*should never have happened*".
   It was undoubtedly unfortunate that Claim 1 was dismissed for the reasons set out between paragraphs 41 and 48 of the Case Summary of 27 November 2020. Again, as set out at length in that document, the reason related to a jurisdictional matter which had only been identified by the Respondent at that late stage of proceedings;

   4.4 (a)-(f);
   It does not follow that, because the claims were consolidated, "*voiding Claim 1 voids them both*". They travelled together as cases for case

management and hearing, but that did not mean that their emanations had been the same;

4.5 '5.Other factors';
The dismissal of Claim 2 did not have the effect of nullifying the employment process which led to the end of the Claimant's employment, nor does a typographical error in the citation of the case number nullify the effect of that order (sub-paragraph (f));

4.6 '6.Summary';
The logic adopted by the Claimant in paragraph 6 (a) is not sound. A route to re-establishing Claim 1 was considered in paragraphs 46 to 49 of the Summary (the use of rule 13). No such application has been made to that effect.
No such application is possible in respect of Claim 2 since it was dismissed for entirely different reasons.
The Judge and/or the Tribunal can give no further advice to the Claimant as to his course of action.

5. 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.

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Employment Judge Livesey
Dated 14 December 2020