



EMPLOYMENT TRIBUNALS

Claimant

Mr A J Basnett

Respondent

BPM Cornwall Ltd

Employment Judge Dawson

DECISION ON APPLICATION FOR RECONSIDERATION

The respondent's application for reconsideration of the decision dated 30 November 2020, is refused.

REASONS

1. The application for reconsideration is made under rule 71 of the Employment Tribunal's Rules of Procedure. The process under rule 72 is for the judge to determine, first of all, whether he or she considers that there is no reasonable prospect of the original decision being varied or revoked. If the judge is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.
2. Under rule 71, except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties.
3. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated "*An employment tribunal has a power to review a decision "where it is necessary*

in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 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. In my judgment, these principles are particularly relevant here”

4. The judgment was sent to the parties on 19 December 2020 and the application for reconsideration was made on 10th February 2021. The application for reconsideration has been made more than 14 days after the date when the judgment was sent to the parties. I do not consider that the respondent has given any good reason as to why I should extend time for the application to be made.
5. If I were of the view that the application for reconsideration had any real prospect of success then I might extend time, even if I thought there was no good reason for doing so. However, the application does not disclose any prospect of persuading me that the decision I made in this case should be varied or revoked. The application simply repeats the matters raised by the respondent at the hearing, namely that the claimant was dishonest. In the oral judgment which I gave, I explained why the respondent’s arguments that the claimant had been dishonest did not give rise to a defence in this case. Nothing set out in the letter of 10th February 2021 has any reasonable prospect of causing me to change my mind.
6. In those circumstances I decline to extend time to seek reconsideration of my judgment and the application is refused.

Employment Judge Dawson
Date: 22 February 2021

Judgment sent to the parties: 11 March 2021

FOR THE TRIBUNAL OFFICE