EMPLOYMENT TRIBUNALS

Claimant: **Mr Richard Green**

Respondent: **Floorform UK Limited**

Heard at: **Newcastle CFCTC on the papers** **On:** **9 February 2021**

Before: **Employment Judge Arullendran**

JUDGMENTON RECONSIDERATION

The Judgment of the Tribunal is that the application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The Claimant made an application on 29 January 2021 for the reconsideration of the Judgment dated 12 January 2021. The application was copied by the Claimant to the Respondent. The Respondent has made no response in reply to the application.

2. The Claimant's application consists of just over 5 pages of text re-arguing matters which were all raised and dealt with at the preliminary hearing on 6 January 2021, including arguments about the Respondent including documents in the Tribunal bundle which had not been disclosed prior to the exchange of witness statements, confusion about whether witness evidence would be called at the hearing, the evasiveness of the Claimant during cross examination, the evidence and finding of fact on the issue of the Claimant's resignation, the failure to produce medical evidence and whether the whole claim stood to be dismissed with the finding that notice of retirement had been given. I note that no new matters are raised in the application and no new evidence is said to have come to light which had not been previously available to the Claimant.

<u>The law</u>

3. Rule 70 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1, provides

   "The Tribunal may, either on own initiative (..) or on the application of a party, reconsider any judgement where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

4. Rule 72 of the Employment Tribunal Rules provides

   "(1) An Employment Judge shall consider any application rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without hearing. The notice may set out the Judge's provisional view on the application."

5. Under the old rule 34 of the Tribunal Rules 2004, there were 5 grounds upon which the Tribunal could review judgement. These were:

   - that the decision was wrongly made as a result of an administrative error
   - the parties did not receive notice of the proceedings leading to the decision
   - that the decision was made in the absence of a party
   - that new evidence had become available since the conclusion of the Tribunal hearing to which the decision related, the existence of which could not have been reasonably known of or foreseen at the time
   - that the interests of justice required a review

6. Under rule 70 of the Tribunal Rules 2013, the Judgement will only be reconsidered where it is "necessary in the interests of justice to do so". This ground gives a Tribunal a wide discretion, but the case law that considered the same ground under the old review procedures suggests that it will be carefully applied. It does not mean that in every case where a litigant is unsuccessful, he or she is automatically entitled to a reconsideration as virtually every unsuccessful litigant think that the interests of justice requires the Judgement to be reconsidered. In fact, the ground only applies where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order: Fforde v Black EAT 68/80.

7. I refer to the case of Redding v EMI Leisure Ltd EAT 262/81 in which the Claimant argued that it was in the interests of justice to review its judgement because she had not understood the case against her and had failed to do justice when presenting her claim. The EAT observed that "*When you boil down what is said on [the Claimant's] behalf, it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see it, cannot be said*

that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation."

Conclusions

8. Applying the relevant law to the Claimant's application for a reconsideration, I find that none of the potential grounds for a reconsideration set out in paragraph 5, above, have been made out in his application. All the matters he complains of were aired in full at the preliminary hearing and a reasoned decision has been made in respect of each matter in the Judgment dated 12 January 2021. Further, no arguments have been advanced by the Claimant to suggest that something had gone radically wrong with the procedure which led to a denial of natural justice.

9. In essence, the Claimant did not do himself justice at the hearing on 6 January 2021, as he was not prepared for the presentation of the evidence and cross examination through his own inexperience and lack of knowledge. Applying the guidance of the Employment Appeal Tribunal in Redding v EMI Leisure Ltd, above, I find that this is insufficient to meet the threshold for the "interests of justice" ground and, therefore, the application reveals no reasonable prospect of the original decision being varied or revoked and falls to be dismissed.

10. Under the provisions of Rule 72(1), as set out above, the application is refused and there is no requirement for the Respondent to respond to the Claimant's application.

11. Note: This has been a paper hearing on the papers which has not objected to by the parties. The form of remote hearing was P - paper. A face to face hearing was not held because it was not required under the provisions of Rule 72(1) of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1.

Employment Judge Arullendran

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
.....9 February 2021….....