EMPLOYMENT TRIBUNALS

Claimant: **Miss B Pawlicka**

Respondent: **Gregory Park Holdings Ltd**
T/A Four Seasons Hotel

Heard at: **Bristol (decision on papers in Chambers)**

On: **16 February 2021**

Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because it is made outside the applicable time limit and there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the Reserved Judgment dated 18 November 2020 which was sent to the parties on 20 November 2020 ("the Judgment"). The grounds are set out in her email dated 9 December 2020. That letter email was received on 9 December 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 not received within the relevant time limit and

thereby being no explanation for the failure to file the application in accordance with the time limit, the application is dismissed on that ground.

3. Nevertheless, for completeness I consider the application on its merits, in the event an appeal court deems that time should have been extended to permit the application to be considered. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

4. The grounds relied upon by the claimant are not identified in the email containing the application (which is to be found in the last sentence of a three page email), However, within the email the claimant complains that (a) the respondent failed to comply with orders to file its witness statement for the hearing but was permitted to rely on it, (b) the respondent's representative joked with a clerk prior to the hearing in relation to the claimant's likely non-attendance and (c) the respondent's solicitor sought to intimidate the claimant by staring out of the CVP screen at her and (d) the statements from Miss Smolinska, and Mr Fleming should be considered.

5. The claimant did not raise issues (b) to (c) with me during the hearing. In any event neither (b) nor (c) had any bearing on the decision which I made on the basis of the matters detailed in the written reasons. The claimant did raise concerns that she did not have sufficient time to consider her cross-examination of Miss Johnston, I therefore adjourned the hearing an hour to consider the statement before asking her questions (see paragraph 10 of the Judgment). When we reconvened after lunch, she confirmed that she had had sufficient time to consider her questions and was ready to proceed. She made no further complaint about the issue.

6. In relation to (d) the claimant had provided Miss Smolinska's statement in readiness for the hearing, however, Miss Smolinska's was not available to give evidence. I therefore warned the claimant that I could give the statement very little weight as she was not available to be cross-examined (see paragraph 8 of the Judgment). The claimant did not file or serve the statement of Mr Fleming and therefore it could not be considered at the hearing. In any event each of the statements dealt largely with the claimant's allegations that she suffered a detriment for raising health and safety concerns, rather than the issue for the preliminary hearing which was the claimant's employment status.

7. It follows that none of the matters raised in the email would in my judgment have the effect that there would be any reasonable prospect of the original decision in the Judgment being varied or revoked.

8. In addition, in so far as the application entreats me to reconsider and review my decision generally, the Employment Appeal Tribunal ("the EAT") in

Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 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". This is not the case here. In addition, it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.

9. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Midgley
Date: 16 February 2021

Judgment sent to parties: 30 March 2021

FOR THE TRIBUNAL OFFICE