# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | | **Respondent** |
|---|---|---|
| Mr O Aghedosa | AND | Urbaser Ltd |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD IN CHAMBERS AT Bristol ON 29 March 2021**

**EMPLOYMENT JUDGE J Bax**

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

**The judgment of the tribunal is that 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 applied for a reconsideration of the extempore judgment dated 4 March 2021 which was sent to the parties on 11 March 2021 ("the Judgment"). The grounds are set out in his e-mail dated 15 March 2021. Neither party has asked for written reasons for the decision.

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 within the relevant time limit

3. 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 were that he had shown that his young daughter had acute health problems coupled with the strict rules under the first lockdown caused by the Covid-19 pandemic and that the Respondent had manipulated attitudes by not communicating his appeal decision on time. That it had not been recognised that many people of the world were more concerned about their health than any other matter due that period of Covid-19. The Claimant said that if he had been asked for evidence of his daughter's illness it would have been provided. I was also referred to the cases of Schultz v Esso Petroleum Co Ltd [1999] ICR 1202,

Consignia plc v Sealy [2002] ICR 1193 and Machine Tool Industry Research Association v Simpson [1988] ICR 558.

5. The earlier case law suggests that the interests of justice ground should be construed restrictively. 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 68/80 (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".

6. More recent case law suggests that the "interests of justice" ground 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). This requires the tribunal to give effect to the overriding objective to deal with cases 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 confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

7. The Claimant was dismissed on 10 January 2020, which was also the last alleged act of discrimination. He did not notify ACAS of the dispute until 2 July 2020 and presented his claim on 25 July 2020. At the hearing, it was accepted that his daughter was unwell in March 2021 and that the Claimant was concerned. The Claimant was told that his appeal against dismissal was unsuccessful on 6 March 2021, more than a month before the time limits expired. He had spoken to a friend after his dismissal in January 2020 and had been made aware of discrimination and health and safety issues, which he had included in his letter of appeal. He also spoke to his friend in mid to late March 2020 and was told that what had happened sounded like unfair dismissal. The Claimant spoke to his friend on a further occasion in mid-April 2020 and had been told about the Employment Tribunal and the need to contact ACAS. The Claimant had telephone ACAS, but his call had not been answered and he assumed that everywhere was closed due to the national lockdown. The Claimant had not made any enquiries online about bringing a claim and it was reasonably feasible for him to have done so and it was unreasonable for him not to have made such enquiries. The Claimant had acted unreasonably by assuming that nobody was working during the

lockdown and by failing to check the Employment Tribunal and ACAS websites. It was concluded that it had been reasonably practicable for the Claimant to have presented the unfair dismissal claim in time and it was not just and equitable to extend time for the discrimination claim.

8. The factual matters raised by the Claimant in his application were raised by him and considered at the hearing on 4 March 2021. Those matters were taken into account when making the decision.

9. If the Claimant had wanted to rely on additional evidence, in relation to his daughter's medical condition, he could have reasonably obtained that information in advance of the hearing, having been given notice of it on 21 December 2021. However, it is very unlikely that it would have had an important influence on the hearing as it was the impediment to the Claimant which was being considered and he was able to take advice from his friend on two occasions after his daughter had returned from Italy with her mother. The Claimant was able to explain the effect of his daughter's condition on him at the hearing. The test in Ladd v Marshall [1954] 3 All ER 745 was not satisfied.

10. The cases referred to by the Claimant do not change the analysis or reasoning of the original decision.

11. The interests of justice must relate to the interests of justice for both sides and include the need for finality of litigation. The matters raised by the Claimant were considered and taken into account at the original hearing and the cases he has referred to do not change that reasoning or analysis. It was therefore not in the interests of justice to reconsider the decision.

12. 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.

**Employment Judge J Bax**
**Date: 29 March 2021**

Judgment and Reasons sent to the parties: 31 March 2021

FOR THE TRIBUNAL OFFICE