



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr C George

AND

Respondent
Marks And Spencer Plc

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON** 26 March 2021

EMPLOYMENT JUDGE N J Roper

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 has applied for a reconsideration of the reserved judgment dated 1 March 2021 which was sent to the parties on 8 March 2021 ("the Judgment"). The grounds are set out in his representative's letter dated 19 March 2021. That letter was received at the tribunal office on 19 March 2021.
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 are these: The respondent had earlier lied about the claimant's disability status; the respondent adduced a second witness statement; the claimant had to change the questions which it wished to ask of the respondent's witnesses; they might have wanted to

have called a witness from the Prince's Trust (namely Ms Coward); the respondent never gave a proper reason for turning the claimant down; the Prince's Trust did not agree with the respondent's decision; the Prince's Trust did not respond to the claimant's correspondence; the claimant was treated unfairly; and the claimant disagreed with the respondent's evidence.

5. This matter has had a long history of detailed case management, including a Preliminary Hearing in person to determine the claimant's disputed disability status. The claimant and his parents represented him and attended at a hearing in person which was conducted partly remotely. The claimant and his parents had every opportunity to adduce such evidence as they wished at the hearing, and to question the respondent's witnesses in detail. They also had every opportunity to address the Tribunal Panel with such observations and/or submissions as they saw fit. The matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its unanimous decision.
6. 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".
7. 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.

8. 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 N J Roper
Date: 26 March 2021

Judgment and Reasons sent to the parties: 01 April 2021

FOR THE TRIBUNAL OFFICE