EMPLOYMENT TRIBUNALS

Claimant: **Mr C Hall**

Respondent: **Sodexo Limited**

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

On: **12 May 2021**

Before: **Employment Judge Midgley**

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 29 March 2021 which was sent to the parties on 14 April 2021 ("the Judgment"). On 23 April 2021 the claimant requested an extension of time for filing the application on the grounds that he had engaged a solicitor but could only obtain an appointment on 27 April, the day before the deadline expired. However, the claimant submitted his grounds for reconsideration in email dated 27 April 2021, within the applicable time limit.

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 identified in the email 27 April 2021 as follows: the claimant complains that:

    a. the judgment at paragraph 18 records that the respondent had a maxim of the "3 Ts" safety check, and notes that that maxim was reinforced through a number of measures, including at the foot of emails as part of the signature of a number of employees. The claimant argues that the emails in the bundle do not reflect that practice. The claimant argues that he was not aware of the maxim

    b. the respondent relied upon the provision of a permit which he alleges has no relation to the work in question about which he made a protected disclosure.

5. The claimant raised both of these matters during the hearing, and they were considered as part of the reserved Judgment. It is worthy of note that one of our findings was that the claimant accepted, during a disciplinary investigation meeting, that he had been made aware of the 3 Ts at a regular meeting with his manager and other employees; his argument was that he was not aware of it prior to that meeting. He did not dispute during the investigation meeting that he was aware of the maxim prior to the events for which he was dismissed.

6. Secondly, the question of whether the respondent had the necessary permit for the works was raised during the hearing. In had no material bearing on the Tribunal's conclusions given that we found that the claimant was not dismissed for making a protected disclosure but rather was dismissed for conduct which was dangerous and which he admitted during the disciplinary process, and the claimant was not arguing that his protected disclosure was that there was no permit, only that it formed part of the background events that contributed to his stress on the day, and should have been regarded as mitigating his admitted conduct.

7. It follows that none of the matters raised in the email would in our 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 us 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, we 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: 12 May 2021

Judgment sent to the Parties: 17 May 2021

FOR THE TRIBUNAL OFFICE