EMPLOYMENT TRIBUNALS

Claimant: **Mr B Abbott**

Respondent: **Metrow Foods Limited**

JUDGMENT FOLLOWING RECONSIDERATION

The Respondent's application for reconsideration of the judgment sent to the parties on 18 March 2021 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Introduction

1. The Claimant presented a claim for unfair dismissal, wrongful dismissal and unauthorised deductions from wages. I heard the claim by CVP on 9 March 2021, at which hearing the Claimant represented himself and the Respondent failed to attend. The claim form and ACAS documentation were sent to the correspondence address of the Company Secretary. Further Tribunal correspondence as regards the final hearing date was sent to the registered company address. The Respondent company was still active at the relevant time. I was satisfied that proper steps had been taken to inform the Respondent of the claim and therefore proceeded to hear the claim in the Respondent's absence. The Claimant's claims for unfair dismissal, wrongful dismissal and unauthorised deductions from wages were successful and I gave reasons orally at the conclusion of the hearing. The judgment was sent to the parties on 18 March 2021 and written reasons requested and sent on 14 May 2021. The Respondent applied for reconsideration of that decision on 19 May 2021.

The applicable legal principles

2. The tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "*it is necessary in the interests of justice to do so*."

3. Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations.

Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.

4. Under rule 71 an application for reconsideration must be made within 14 days the date on which the judgment (or written reasons, if later) was sent to the parties. I accept that this application was made in time.

5. The approach to be taken to applications for reconsideration was considered in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA in the judgment of Simler P. The tribunal should:

   (a) identify the Rules relating to reconsideration particularly the provision enabling a Judge, who considers that there is no reasonable prospect of the original decision being varied or revoked, to refuse an application without a hearing at a preliminary stage;

   (b) address each ground in turn and consider whether there is anything in each of the particular grounds relied on that might lead a tribunal to vary or revoke the decision; and

   (c) if this leads to the conclusion that there is nothing in the grounds advanced by that could lead to the decision being varied or revoked, give reasons for that conclusion.

6. In paragraphs 34 and 35 of the judgment Simler P gave the following guidance:

> **"***A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.*
>
> *Where … a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."*

The Respondent's ground for reconsideration

7. The Respondent's ground for reconsideration centres around its circumstances during the pandemic. The Respondent is a company operating in the food sector. Turnover was reduced significantly because of Covid-19 lockdown measures. The Respondent states that it remained open to support front-line staff but only had a small management team. As such, all issues associated with employment and payroll were automatically referred to the managing director, Mr Bruce Hodges. In mid- December 2020, Mr Hodges was on holiday. Due to lockdown measures he was stranded and unable to return until mid-April. The Respondent states that during that time, junior staff were maintaining day-to-day activities which included collecting correspondence addressed to the company but were

not taking any further action in respect of it. The Respondent states that this is the reason it did not attend the hearing. It further states the Mr Hodges was unable to access the documents and take advice on the most appropriate way to contest the claim.

8. The Respondent outlines that the situation it found itself in was unprecedented and beyond the control of the managing director due to his unplanned absence. The Respondent states that it was unable to present a response to the claim to defend its actions especially with respect to compliance with ACAS guidelines.

9. I do not consider there is a reasonable prospect of the original decision being varied or revoked on the basis of the circumstances as set out by the Respondent nor would it be in the interests of justice to reconsider the decision:

   (a) The claim form and ACAS correspondence were sent to the Company Secretary's address. Further Tribunal correspondence as to the date of final hearing was sent to the registered company address. The Respondent company was active at the time. The Respondent states that correspondence was being collected. It was possible and it would have been prudent to open the correspondence and decide what action needed to be taken accordingly. Had a junior member of staff done so, there would have been electronic means of sending the information to Mr Hodges who would then have been able to take appropriate advice. It is therefore not "*necessary in the interests of justice"* to reconsider the decision in order to take the Respondent's circumstances into account.

   (b) There is no identifiable administrative error meaning it would be necessary in the interests of justice to reconsider the decision. All tribunal correspondence was sent to registered addresses of the Respondent company/company secretary.

   (c) As set out above, there is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. The Respondent had every opportunity to engage with proceedings via the properly-sent correspondence. In the circumstances, it would not be in the interests of justice to afford the Respondent a 'second bite of the cherry'.

   (d) The Respondent mentions being unable to present a response to defence its actions especially in respect to compliance with ACAS guidelines. I do not consider there is anything in this statement which demonstrates a reasonable prospect of the original decision being varied or revoked. The ACAS guidelines were fully considered at the original hearing.

Employment Judge Cheunviratsakul
Date: 21 July 2021