



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr I Tapping

AND

Respondent
Ministry of Defence

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 7 January 2022

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 has applied for a reconsideration of the reserved judgment dated 8 November 2021 which was sent to the parties on 1 December 2021 ("the Judgment"). The grounds are set out in his e-mail dated 10 December 2021, which was at the tribunal office the same day.
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 Claimant seeks a reconsideration in relation to part of the Judgment only, namely that the proven claims for detriment for making a protected disclosure were presented out of time and that it was reasonably practicable for the Claimant to have presented it in time. The grounds relied upon by the Claimant are in essence that time should have started running from the point in time that he realised there had been a detriment and not the trigger event. He also sought to link the time with his reasonable adjustments claim and suggested that time should start running from when he says that the Respondent closed its investigation into the disclosures made by the Claimant.
 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. At the final hearing, the evidence of the parties was heard and considered, as were the arguments put forward in closing submissions. Time for a claim of detriment for making a protected disclosure runs from the time the act of detriment occurred. The Claimant was present when he was threatened by Mr Bailey and he was therefore aware of the incident and that it had followed him revealing that he had made a protected disclosure. On the basis of the facts found and for the reasons set out in the Judgment it was reasonably practicable for the Claimant to have presented the claim in time.
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 J Bax
Dated 7 January 2022

Judgment sent to Parties on
10 January 2022
By Mr J McCormick