EMPLOYMENT TRIBUNALS

Claimant: **Mr P Knight**

Respondent: **Mr Robert Cooper**

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

On: **16 December 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 Reserved Judgment being varied or revoked.

REASONS

1. Following a hearing by video on 24 September 2021 which the respondent did not attend, Judgment in favour of the claimant was promulgated on 24 September 2021 and was sent to the parties on 12 October 2021.

2. The respondent applied for a reconsideration of the Judgment on 19 October 2021. At that time, the grounds of the application were that the respondent was not confident that the Tribunal had received and considered a series of two emails (the latter with six attachments) which were sent by the respondent to the Tribunal on 20 September and 22 September 2021 respectively. The respondent argued those documents demonstrated that the claimant had received payments exceeding the sums of his claims in the proceedings.

3. 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 for reconsideration was therefore made within time.

4. The Tribunal accepted the application and directed that the respondent should provide copies of the emails in questions and their attachments, that the claimant should comment on the application, and that both parties should indicate whether they wished that application to be considered at a hearing or on paper.

5. On 4 November 2021 the claimant objected to the application. Within the email containing his objection he confirmed that he had received the emails of 20 and 22 September and the attachments and there were therefore no grounds to think that they had not been received or considered by the Tribunal. He did not object to the application being determined on the papers; failing to indicate a preference for a hearing or a paper determination.

6. On 9 November 2021 the respondent sent the emails of 20 and 22 September to the Tribunal and responded to the claimant's email of 4 November 2021. The details of that response are not material to the reconsideration application.

7. The respondent indicated in his correspondence that he had not attended the final hearing because of ill health. I therefore determined that it was appropriate to determine the application for reconsideration on the basis of the parties' written representations.

8. 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.

9. It is relevant to review the events which culminated in the Judgment on 24 September 2021: By a claim form presented on 11 November 2020 the claimant brought claims for redundancy pay and unpaid annual leave. In a response presented on 4 January 2021 the respondent resisted the claims, arguing that (a) the claimant had breached the terms of a tenancy agreement in relation to accommodation provided by the respondent to the claimant causing loss to the respondent and (b) the respondent had paid the claimant sums exceeding his claim to redundancy. However, no employers contract claim was made, and therefore the claims detailed at (a) above could not be considered or used to reduce or set off the respondent's liability for the claimant's claims.

10. The claims were first listed for a final hearing on 20 August 2021 by video, given the respondent's ill health prevented him from attending in person. The respondent did not attend on that occasion, but (in the circumstances detailed in EJ Livesey's Order of that date) was contacted by telephone and the final hearing was relisted for 24 September 2021. The respondent was directed to detail why he could not participate in that hearing or arrange for a representative to do so. He did not comply with that Order.

11. On 24 September 2021, Mr Knight attended and produced a bundle of relevant documents. The respondent had not provided any documents, such as evidence of the payments made to the claimant which he asserted in correspondence to the Tribunal that he had made. I heard evidence from the claimant and considered the response and the documents provided to me before reaching my Judgment.

12. The claimant's emails of 20 and 22 September 2021 were not before me. Those emails are not evidence of themselves, but the attachments contained documents that could have been treated as evidence, in particular they contained:

    a. the accommodation agreement dated 1 May 2017 made between the claimant and the respondent;
    b. an invoice rendered to the claimant by the respondent on 20 September 2021 for accommodation charges (relating to the breach of the accommodation agreement);
    c. an email from the respondent to the Tribunal relating to his ability to attend the hearing on 20 august 2021 (dated 3 August);
    d. An email from the respondent to the claimant dated 20 September 2021 in relation to the claimant's claims.

13. None of the documents contained direct evidence of the sums paid to the claimant (such as a bank statements) nor contemporaneous documentary evidence of the sums paid and the reasons for which they were paid. I reiterate that as there is no employer's counterclaim the respondent's liability for redundancy pay cannot be extinguished or reduced by a putative claim for damages for breach of a contractual agreement relating to accommodation provided to the claimant by the respondent. In the absence of the respondent attending to give evidence as to the matters alleged in the emails or the response, I could give those documents almost no weight, although I did test the claimant's evidence and question him on the basis of the case contained within them.

14. It follows that in my judgment none of the matters raised in the emails of 20 or 22 September 2021 would have altered the Judgment made on 24 September 2021. The respondent's grounds for reconsideration do not give

rise in consequence to any reasonable prospect of the original decision in the Reserved Judgment being varied or revoked.

15. In addition, in so far as the application entreats me 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.

16. 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 Midgley
Dated: 16 December 2021

Judgment sent to parties: 11 January 2022

FOR THE TRIBUNAL OFFICE