



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant Mr B Meunier

Respondent St Michael's Hospice (North Hampshire)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON

17 February 2022

EMPLOYMENT JUDGE K Halliday

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 Judgment dated 16 December 2021 which was sent to the parties on 11 January 2022 ("the Judgment") following a hearing on 17 and 18 November 2021. The grounds were set out in a letter dated 28 November 2021 which also included extracts from additional documentation and information. That letter was received at the tribunal office on 12 January 2022 after having been re-sent following receipt of the written Judgment by the claimant.

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:
 - 4.1. The Respondent did not fully comply with its obligation to disclose all relevant information, and this biased the Claimants case in favour of the Respondent;
 - 4.2. The reason for redundancy was unfair and not a genuine redundancy situation (alternative reasons) – the Respondent wanted to remove the Claimant from his role by dismissing him;
 - 4.3. New evidence and details which support the claimant’s claim that:
 - 4.3.1. The Claimants department/role was not in-scope for cost savings
 - 4.3.2. The Respondent engaged with external IT providers to outsource the Claimants role
 - 4.3.3. Board Members/Trustees approved the costs associated with outsourcing IT
 - 4.3.4. Senior Management hoped the Claimant would take voluntary redundancy
 - 4.3.5. When the Claimant did not take voluntary redundancy, he was placed into a pool of one.
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. The matters raised by the claimant in his application were considered in the light of all of the evidence presented to the tribunal before it reached its decision. The grounds submitted by the claimant in relation to the redundancy being an alternative to the proposal to outsource IT and that the redundancy was not the genuine reason for the claimant's dismissal were raised by the claimant at the hearing of this matter and have already been considered by the Tribunal. Whether or not the claimant's role was originally included in the redundancy proposal or added at a later date would not affect the finding that his dismissal was by reason of redundancy and fair.
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 K Halliday
Date: 21 February 2022

Judgment sent to parties: 22 February 2022

FOR THE TRIBUNAL OFFICE