EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen Green

Respondents: (1) The Governing Body of Newbridge Primary School
(2) Bath & North East Somerset Council

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 14 February 2022 which was sent to the parties on 17 February 2022 ("the Judgment"). The grounds for reconsideration are set out in the claimant's email dated 18 February 2022. That letter was received at the tribunal office on the same date.

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. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

4. 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.

5. The grounds relied upon by the claimant are these and I respond to each in turn.

6. **The Tribunal is obliged to make it clear that the claimant understands.** He refers to the importance, which I entirely recognise, of the tribunal taking care when a litigant in person requests a withdrawal. The claimant refers to the case of Campbell-v-OCS Group and sent a copy of that case with his application. In that case an unrepresented claimant withdrew her claim after the start of the hearing citing ill health and medical advice. The claim was dismissed on withdrawal. The claimant sought reconsideration of the dismissal judgment on the basis that her withdrawal was involuntary. In that case the EAT allowed an appeal on the basis that the tribunal ought to have considered and addressed the dismissal decision and the question of whether there were reasonable prospects of it being varied or revoked.

7. I am satisfied that Mr Green's withdrawal was in no sense involuntary. He signalled his wish to withdraw on several occasions in writing before the hearing and these are set out in my dismissal judgment. It was a considered application. He understood that the consequence of that would in the normal course, be a dismissal unless there were legitimate reasons not to dismiss (Rule 52 (a)) – this is established by his application making it clear that he wished his claim to not be dismissed. I took care to consider, whether on the basis of the totality of the information before me, I could identify any legitimate reason for not dismissing and, as my judgment sets out, I was satisfied that there was no such reason. Further I addressed the issue of whether it would not be in the in the interests of justice to dismiss.

8. **Equal Treatment Bench Book.** Whilst recognising the significant importance of the ETBB I am also satisfied that the tribunal's communication with the claimant was clear. Further the tribunal ensured that all reasonable adjustments were checked and offered as set out in my judgment.

9. **Confusion/What is a hybrid hearing**. I do not accept that there was any confusion regarding whether the hearing was going ahead. The tribunal correspondence was clear and I am satisfied from the claimant's emails of 13th and 14th February confirm that he knew a hearing was proceeding

on 14 February. In the first he objects to the hearing proceeding and in the second he confirms that he will not be attending the hearing. Neither gives any indication that he was confused about whether it would go ahead. The claimant was reassured by the tribunal on 11 February that he may attend in person and guidance was sent to explain hybrid hearings. If the claimant was confused regarding what was meant by a 'hybrid' hearing, as he sets out in his application, any such confusion could have been raised by him at the start of the hearing.

10. **The claimant was ill on the day of the hearing**. The claimant's emails of 13 & 14 February were considered by me on the day but in the absence of an application to adjourn or any medical evidence from the claimant to support any such application the hearing went ahead. My judgment sets out that the claimant apologised for not attending but did not request an adjournment on medical grounds.

11. **Further autism emails.** These were not before me at the hearing.

12. **New Claims**. If the claimant wishes to present new claims that is a matter for him. It does not create a proper basis to now reconsider my the dismissal of his claims for disability discrimination.

13. The matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its [unanimous] decision. 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.

14. 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 Christensen
Date: 24 February 2022

Judgment sent to parties: 3 March 2022

FOR THE TRIBUNAL OFFICE