EMPLOYMENT TRIBUNALS

Claimant: Mr Ayodele Martin

Respondents: London Borough of Southwark (1)
The Governing Body of Evelina Hospital School (2)

Heard at: London South (Croydon) **On:** 18 February 2022

Before: Employment Judge C H O'Rourke

By way of Written Submissions

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Judgment of the Tribunal is that the Claimant's application for reconsideration is refused.

REASONS

1. The Claimant has applied for a reconsideration of the reserved judgment dated 12 February 2021, which was sent to the parties on 21 April 2021 ("the Judgment"). The grounds for that application are set out in his solicitor's email dated 7 December 2021. The Respondent's solicitors set out their objections to that application in their email of 8 December 2021, with additional comments in an email of 9 February 2022. The Parties were invited to indicate whether or not such an application could be dealt with without a hearing. The Respondent agreed that it could be and the Claimant did not respond.

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 not 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. In this case, the Claimant seeks to rely on the contents of a Judgment of the Employment Appeal Tribunal (EAT) (EA-2020-000432-JOJ), sent to the parties on 30 September 2021, which although related to three separate earlier claims of the Claimant, should, the Claimant contends, allow for reconsideration of this Tribunal's Judgment.

4. I decline to exercise my discretion to extend the time limit for presentation of this application, for the following reasons:

   a. Even assuming that the EAT Judgment does contain material relevant to possible reconsideration of this Tribunal's Judgment and that the Claimant was not in a position to make this application until he had seen it, his solicitors were, nonetheless, in possession of it (on their submission) by or shortly after 30 September 2021, but did not make this application until 7 December 2021, some tens weeks' later. The only explanation offered for that approximately eight weeks' delay (based on the 14 day time limit) is that '*a conference with counsel on 26 November 2021 to consider the EAT's judgment caused us to make this application'.* However, I see no reason why, as the Claimant's legal representatives, they were not in a position, either without counsel's input, or to, alternatively, by promptly seeking such input, to make this application considerably earlier. Even following that conference, there was a further delay of a week and a half before the relatively brief application was submitted. I don't consider such delay justifiable.

   b. Applying the Overriding Objective (Rule 2), I don't consider it fair or just to permit such a delayed application, in particular in respect of the need to deal with cases in ways that are proportionate to the complexity of the issues. I bear in mind, in this respect that as a consequence of the EAT Judgment, the earlier claims of the Claimant, which were entirely related, as I found in my Judgment, to the claims he was attempting to bring before me, are now remitted to a fresh Tribunal, for hearing *de novo*. He will, therefore, have a second opportunity to have them heard.

5. In any event, even were I minded to extend time for the making of this application, I don't consider that the grounds for reconsideration, as set out in Rule 70, namely that it is necessary in the interests of justice to do so, are met in this case.

6. The grounds relied upon by the Claimant (and my responses to them) are as follows:

    a. That some of the alleged detriments he wished to pursue in his protected disclosure before me could not have been brought within his three previous claims, as they had not yet occurred. However, as found in my Judgment (paragraph 11.b.v.), it was unclear from the claim that there were, in fact, any new alleged detriments, but that even if they were new, they were estopped, applying the rule in **Henderson v Henderson [1843] 3 Hare 100**. This ground of the Claimant's application seems merely to seek to re-open a matter already adjudicated upon, but without fresh argument or evidence.

    b. Implicitly, it is contended that in some way the EAT Judgment makes findings of relevance to my Judgment, hence the need for the Claimant to see it, before making this application, but, however, it does not. What it does is to decide that the Tribunal which heard the original claims erred in determining what could constitute a 'protected disclosure' and remitted those claims to a fresh Tribunal. It is not, I consider, of any relevance to my Judgment in respect of the claim before me being estopped as *res judicata*.

7. The matters raised by the Claimant were considered in the light of all of the evidence presented to the Tribunal before it reached its decision. 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.

8. Accordingly, I refuse the application for reconsideration pursuant to Rule 72.

_____
Employment Judge O'Rourke

Dated: **18 February 2022**

JUDGMENT AND REASONS SENT TO THE PARTIES ON: **20 April 2022**

.....
FOR THE TRIBUNAL OFFICE