# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Anatoli Smirnov

**Respondents:** Network Rail Limited (1)
Mr Geoffrey Montagne (2)
Mr Thomas Beck-Nielson (3)

**Before:** Employment Judge C H O'Rourke

**By way of written representation**

# DECISION ON RECONSIDERATION APPLICATION

The Claimant's written application of 6 May 2022 for reconsideration of the Judgment of 9 March 2022 is refused, subject to Rule 72(1) of the Tribunal's Rules of Procedure 2013, as there is no reasonable prospect of the decision being varied or revoked.

# REASONS

1. Claimant's application. The Judgment having been sent to the Claimant on 22 April 2022, his application is within the time limit set in Rule 71. Briefly, that application is summarised as follows:

    a. He requests that another judge decide this application. There is, however, no provision within the Rules for a judge other than I to deal with this matter, unless it were not 'practicable' for me to do so, due to illness, retirement etc., which does not apply in this case and this issue is not therefore considered further (Rule 72(3)).

    b. He refers to events in the war in Ukraine, on the first day of the Hearing, 'distracting' him, due to members of his family being in Kyiv. However, he has provided no corroborative evidence to support this assertion and nor did he raise the matter during the Hearing, during which he gave no indication of any such 'distraction'. I note also my findings in the Judgment as to the Claimant's vexatious conduct (paragraphs 27 and 28), in the manner in which he has brought and pursued what I consider to be wholly unmeritorious claims, thus indicating that he is willing to state whatever might be necessary to attempt to support his case. This matter is not therefore considered further.

c. That bias was shown towards him by him in the manner in which the issue of territorial jurisdiction was determined. He contends that the First Respondent should not have been able to rely on the 'Recast Brussels Regulations', as only Rule 8 of the Tribunal's Rules of Procedure had been previously referred to as at issue and that the manner of its application was an error of law.

d. That the Tribunal's decision that the Respondents had complied with a previous 'unless' order was perverse.

2. Territorial Jurisdiction. Briefly, my reasons for refusing this element of the application are as follows:

a. The issue of territorial jurisdiction was a 'live' one, having been raised in the previous preliminary hearing, some five months earlier and was included in the list of issues set out after that Hearing. It is therefore immaterial as to whether or not it was set out in the relevant ET3.

b. While that list of issues referred only to Rule 8, in respect of jurisdiction, the Claimant had approximately a month's notice of the First Respondent's intention to also rely on the Recast Brussels Regulations, on this point. The Claimant did not seriously dispute this matter at the Hearing, indeed stating that he didn't '*want to waste too much time on this, as it's obvious that the ET has territorial jurisdiction under Rule 8'*. However, had he objected at the time and if it had been necessary for the First Respondent to make an application to rely on those Regulations, I would have granted it, as they are entirely relevant to the issue and the Claimant had had ample notice of the Respondent's intention to do so.

c. I decided, in any event that while the Tribunal did not have jurisdiction under the Regulations, it also did not, in any event, either have jurisdiction under Rule 8. That finding (and also the fact that apart from one minor aspect of his claim, whether his claim against the First Respondent was potentially within the time limit, I found against him on all other issues) renders this matter otiose.

d. As to the alleged error of law, raised at 'point 3' of the application, my decision in relation to the 'habitual/last habitual' place of work was that, based on the First Respondent's submissions (18.c.), the Tribunal did not have jurisdiction, as the Claimant's habitual place of work was in Denmark. As the evidence indicated, he returned to that Country after having worked in UK and therefore, by way of clarification that was also his 'last habitual' place of work. It was clear, applying the ECJ's judgment in **Weber v Universal Ogden Services [2002] ICR 979** that 'habitually worked' is in principle the place where he worked the longest on the employer's business over the course of his employment and that can never, therefore, have been UK. Again, as stated above, in view of the other findings made, this matter is also otiose.

3. Compliance with 'unless' order. The Claimant's submissions, as now reiterated by him in his application, were considered at the Hearing and the decision made stands. He now simply seeks to re-litigate that issue.

4. Conclusion. I don't consider that any of the grounds raised by the Claimant in support of his application for reconsideration render it in the interests of justice to vary or revoke the original Judgment. 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.

5. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1).

Employment Judge O'Rourke

Dated: 19 May 2022