



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Best

Respondent: Embark on Raw Limited

DECISION ON APPLICATION FOR RECONSIDERATION **(Rules 70 -73 Employment Tribunals (Constitution and Rules of Procedure)** **Regulations 2013.**

1. The Claimant's application on 25 May 2022 for reconsideration of the Remedy Judgment dated 31 January 2022 and sent to the parties on 16 February 2022 is refused. The Claimant seeks to substitute Mr David Fletcher and Mrs Andrea Fletcher as liable to pay the remedy awarded save for the compensation in relation to unfair dismissal for which it says the Respondent should remain liable as the employer of the Claimant.

2. First, the application has been made out of time by reference to Rule 71 and the application to extend time is refused. I am not satisfied that time should be extended because the Claimant was unaware until 5 April 2022 that the Respondent may not or could not pay the sums of compensation awarded to her. Nor am I satisfied that she did not know until that date that she could not potentially join the individual Directors as parties to these proceedings at any time. The Claim was lodged almost two years ago on 6 August 2020 when the Claimant had the benefit of professional legal advice. In her claim she makes specific and detailed reference to acts of discrimination, harassment and detriment done by Mr and Mrs Fletcher personally. Mr and Mrs Fletcher are the sole directors of the Respondent.

3. By reference to Rule 72 there is in any event no reasonable prospect of the original decision on remedy being varied or revoked so as to join Mr and Mrs Fletcher as parties to this case so that they may be made liable for part of the remedy awarded.

4. A reconsideration in the terms requested by the Claimant also requires an amendment to the original Claim to substitute Mr and Mrs Fletcher as parties to these proceedings from the start and to re-consider the Liability Judgment to ascertain their individual liability. I refuse such an amendment under Rule 34 of the 2013 Rules. This is because the issues between the Claimant and Mr and Mrs Fletcher in their personal capacities was evident from the date on which the claims against the Respondent were made. The Claimant did not then seek to join Mr and Mrs Fletcher even though she had legal advisors. The timing of this application is too late.

5. In addition it is not in the interests of justice to join Mr and Mrs Fletcher. Such a step would in my determination require a complete re-hearing of the evidence in both the liability

and remedy hearings in order to precisely identify the liability of each proposed individual Respondent and potentially apportion remedy. It is insufficient to rely upon the existing findings of the Tribunal in a case where there was only one Respondent. The prejudice to the Respondent and to Mr and Mrs Fletcher is excessive and overwhelming particularly in circumstances where the case is unlikely to be re-heard until the end of 2023.

6. I am unable to comment on the conduct of the Respondent or its Directors in relation to its liquidation or on the business affairs of any party involved.

7. I would however point out that both the liability and remedy judgments were judgments of the full tribunal and not 'handed down' by me sitting alone.

Employment Judge B Elgot
Dated: 16 June 2022