



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs H Gardner

AND

Respondent

J.S. Bloor (Services) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 10 June 202

EMPLOYMENT JUDGE J Bax

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 7 April 2022 and after written reasons were given on 29 April 2022 which was sent to the parties on 19 May 2022 (“the Judgment”). The grounds are set out in a letter dated 2 June 2022. That letter was received at the tribunal office by e-mail at 2352 on 2 June 2021.
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:
 - (1) That the Tribunal should have reached a different conclusion on whether the Claimant was disadvantaged in relation to the criteria relating to sickness absence. In that, the inconsistency between the Claimant’s oral and written evidence should have been resolved by preferring the written evidence.
 - (2) That the likely score in relation to selection criteria 8 should be reconsidered and that due to 3 points raised there is such uncertainty that it was not possible to find that the Claimant would have been dismissed in any event.
5. 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.
6. 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”.
7. 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.
 8. In Outasight VB Ltd v Brown [2015] ICR D11, EAT, HHJ Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows the tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'*.
 9. In relation to the first ground for reconsideration, the same argument was made at the final hearing by counsel and was considered and rejected. The Tribunal was faced with an inconsistency between the Claimant's previously untested written evidence and her answers in cross-examination and the conclusion was reached after considering the whole of the evidence. A reconsideration application is not an opportunity for a second bite at the cherry and there needs to be a finality of litigation. The matters raised by the Claimant do not change the analysis as set out in the written reasons and it is not in the interests of justice to reconsider this aspect of the decision.
 10. In relation to the second ground for reconsideration, both parties made submissions in relation to how the Claimant should have been scored in relation to criteria 8. It was argued at the final hearing, by the Claimant, that the level of uncertainty was too high to make a finding that the Claimant would have been dismissed in any event. Regard was taken of all the evidence and taking into account the findings of fact made it was not considered that the exercise was too speculative. A reconsideration application is not an opportunity for a second bite at the cherry and there needs to be a finality of litigation. The matters raised by the Claimant do not

change the analysis as set out in the written reasons and it is not in the interests of justice to reconsider this aspect of the decision.

11. Accordingly the application for reconsideration pursuant to Rule 72(1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge J Bax
Date: 10 June 2022

Judgment sent to Parties: 21 June 2022

FOR THE TRIBUNAL OFFICE