EMPLOYMENT TRIBUNALS

Claimant: **Mr B Lingard**

Respondent: **The Isle of Wight NHS Trust**

Heard at: **Bristol (decision on papers in Chambers)**

Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because there it is not in the interests of justice for the decision to be varied or revoked.

REASONS

1. The claimant seeks reconsideration of the Judgment of 13 July 2022, which was sent to the parties on the same day, dismissing the claim of unfair dismissal contrary to section 111 ERA 1996 on the grounds that the claimant lacked the two years' of continuous service required by s.108 ERA 1996.

2. The claimant applied for reconsideration on 14 July 2022 identifying two grounds: (1) he had 'an automatic right from day 1 to make claims for unfair dismissal on discriminatory grounds (2) EJ Midgley, who issued the dismissal Judgment had, in the claimant's view, perpetrated 'fraud on the court' and the Judgment formed part of my alleged harassment of the claimant.

3. On 9 August 2022 the claim was dismissed on its withdrawal by the claimant in an email dated 22 July 2022 at 02:58. This Judgment on reconsideration is therefore delivered for completeness, but is necessary brief.

   Background

4. The claim was presented on 30 April 2022. The claimant ticked the boxes at section 8.1 of the ET1 identifying claims of unfair dismissal, discrimination on the grounds of disability and indicated that he was bring a claim of 'whistleblowing.' At section 5.1 he identified his employment began on 5 May 2021 and ended on 1 February 2022. He therefore lacked the two years continuity of employment required to bring a claim of unfair dismissal under s.111 ERA 1996. He was still of course able to claim that his dismissal was an act of discrimination or a detriment influenced by a protected (s.487B and 48 ERA 1996) or that the reason or principal reason for his dismissal was a protected disclosure (103A ERA 1996).

5. At box 8.2 the claimant identified that he was an employee, detailed that he had been summoned to a disciplinary hearing and dismissed and wrote "Claim 4 unfair dismissal discrimination / harassment / sec 15 The C was either dismissed for 2 or 3." Separately, the claimant identified complaints of whistleblowing detriment and 'unfair dismissal whistelblowing' which was understood to be a claim under s.47B and 103A.

6. On 10 May 2022 EJ Rayner directed the claimant to provide further information in relation to the unfair dismissal claim (and others) by 24 May 2022 and sent a strike out warning relating to the unfair dismissal claim due to the claimant's lack or the required period of employment. In relation to the later he was directed to show cause why the claim should not be struck out by 7 June 2022. The respondent was directed that it did not need to respond to the unfair dismissal claim.

7. The claimant responded on 10 May 2022 stating "Is this serious, an unfair dismissal for discrimination is automatically unfair. This is embarrassing." It was clear, therefore, that he did not understand that the Tribunal's direction related to a claim under s.111 ERA 1996 only.

8. In further emails sent that day he purported to withdraw the claim due to intimidation by the 'regional judge,' complained EJ Rayner's directions were harassment, identified that his complaint as one of discriminatory dismissal and indicated that he believed that the strike out warning related to that claim.

9. On 7 June the respondent filed its response to the claims.

10. Consequently, on 11 July 2022 I sent a direction to the parties that recorded the following

"The claims in claim 1401513/2022: The Judge understands that despite ticking the box on the ET1 claiming unfair dismissal the claimant:

a. *is not pursuing a claim of unfair dismissal contrary to s.11 ERA 1996, but rather*
b. *seeks to argue that his dismissal was an act of discrimination, alternatively was automatically unfair contrary to s.103A ERA 1996 on the grounds that the principal reason for the dismissal was one or more protected disclosures said to have been made by the claimant.*

In those circumstances, the file will be noted that there is no claim for unfair dismissal under s.111 Employment Rights Act, and the respondent is not required to submit a response to it."

11. The reference to s.11 was a typographical error, it was intended (as was apparent from the second paragraph) to be a reference to s.111 ERA 1996.

12. On 12 July 2022 the claimant replied, stating "your rights for unfair dismissal are from first day. The c is pursuing a claim to era s11". The Tribunal therefore understood that the claimant maintained that he had brought a claim under s.111 ERA 1996. He did not suggest that the dates of employment identified in the claim form were wrong, and they did not satisfy the requirement in s.108 ERA 1996

13. Consequently, on 21 July 2022 I directed that the claim under s.111 ERA 2022 should be struck out, providing summary reasons to assist the claimant and to reassure him that his remaining claims were not affected by that decision.

Conclusions

14. The grounds for reconsideration are only those set out in Rule 70, namely that it is in the interests of justice to do so.

15. I address each grounds relied upon by the claimant in turn:

a. The claimant he had an automatic right to bring a claim for unfair dismissal from the first day of his employment. That argument is simply wrong in so far as it relates to a claim under s.111 ERA 1996 and, in any event, I had considered it before dismissing the claim.
b. I had committed fraud on the court. That complaint related to other claims (1401373/2021 and 1401244/2021) and disclosed no basis on which to conclude that Judgment in this case was perverse or an error of law, such that it was in the interest of justice to revoke it.

16. In so far as the application entreats me to reconsider and review my decision on matters of fact or arguments which I have previously determined,

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".

17. There was no denial of natural justice in this case, the claimant simply does not understand the law.

18. Accordingly, I refuse the application for reconsideration pursuant to Rule 72 because it is not in the interest of justice for the Judgment to be varied or revoked.

Employment Judge Midgley
Date: 11 August 2022

Judgment sent to the parties: 15 August 2022

FOR THE TRIBUNAL OFFICE