



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Fabio Serci

**Respondent:** Padstow Harbour Hotel Limited

**Before:** Employment Judge Halliday

## **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 originally sent to the parties on 8 April 2022 further to receipt by the claimant of written reasons which were sent to the parties on 18 July 2022 ("the Judgment"). The grounds are set out in a document headed "Application for Reconsideration" sent to the tribunal office by email on 1 August 2022.
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 in summary that: it is in the interests of justice, there is new evidence, and he raises challenges to the credibility of the respondent's witnesses.
5. Specifically, the claimant:
  - 5.1. refers to new evidence of the lack of an advert place on Mr Reburn's facebook page in support of the contention raised at the tribunal hearing the breakfast manager position was not advertised;
  - 5.2. asserts that Mr Reburn was not a credible witness. At paragraphs 5 – 26 of his application, the claimant asserts that there a number of inconsistencies between Mr Reburn's witness statement, the documentary evidence and the answers given under cross-examination. The claimant records his disagreement with the findings of the tribunal and refers to answers given by Mr Reburn in cross-examination which he argues support his case. The claimant also repeats some of the submission he made at the hearing and invites the tribunal to draw a different conclusion from that reached by the panel following the original hearing;
  - 5.3. asserts that Ms Roach was not a credible witness. At paragraphs 27 – 29 of his application, the claimant records his disagreement with the findings of the tribunal and refers to answers given by Ms Roach in cross-examination which he argues support his case.
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. The matters raised by the claimant in his application were considered in the light of all of the evidence presented to the tribunal before it reached its decision. The grounds submitted by the claimant in relation to the creditability of the Respondent's witnesses (and inconsistencies in some parts of that evidence) including the answers given during cross-examination by each of the witnesses set out at paragraphs 5 to 29 of the grounds, have already been considered by the tribunal at the hearing. No material new issues or evidence are raised in these grounds. The facebook page referred to by the claimant at paragraphs 2 to 4 as new evidence is relevant to only one minor issue in dispute between the parties. The fact that the advert for breakfast manager was not placed on facebook was noted by the tribunal who nevertheless concluded that the role had been advertised elsewhere. Further this is not in itself a material factor which could lead to a finding of discrimination given the other findings of fact made by the tribunal having heard from all the witnesses, including Ms Fowler on behalf of the claimant.
9. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge Halliday  
Date: 14 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON  
26 August 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE