



EMPLOYMENT TRIBUNALS

Claimant: Miss M Daum

Respondent: Mr J Fletcher

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent'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 and Reasons, the latter having been sent to the parties on 9 August 2022. The grounds are set out in his application of 22 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 inside the relevant time limit.
3. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell 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". More recent case law has suggested that the test 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) in order to ensure that cases are dealt with 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 stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

4. The Respondent's application concerns one element of the claim; the deduction from the Claimant's pay of £540 which had related to sickness absence. The Claimant understood that the deduction had related to Easter 2021 but the Respondent asserts that it had related to other times; 11, 16 (½ day), 25 and 26 November 2020 and 4 and 17 March 2021 (see [80] of the hearing bundle, R1).
5. The problems with that argument are as follows;
 - a. At the very start of the Claimant's evidence, in answer to some initial questions of clarification, she stated that the 4 consecutive days that she had had off over Easter had *not* been worked back but had been agreed and paid for. Accordingly, her evidence was that the Easter absence was agreed to have been paid for (evidence which was not challenged) and the other absences were worked back;
 - b. I accepted the Claimant's evidence that those other days which she had off sick, had been worked back (paragraph 5.9 of the Reasons).
6. 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 Livesey
Dated 24 August 2022

Judgment sent to Parties on
06 September 2022 By Mr J McCormick

For the Tribunal Office