EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr I Tapping	AND	Ministry of Defence

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol **ON** 27 July 2022

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's e-mail dated 27 July 2022 has been treated as an application for a reconsideration of the reserved judgment dated 8 November 2021 which was sent to the parties on 1 December 2021 ("the Judgment").

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 not received within the relevant time limit.

3. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

4. 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.

5. The ground relied upon by the claimant is that there was a factual error in the Judgment as to when the period there was a failure to make reasonable adjustments ended.

6. The matters raised by the Claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision.

7. 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".

8. 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.

9. 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'*.

10. The Judgment was sent to the parties on 1 December 2021 and therefore any application for a reconsideration should have been made by 15 December 2021. The Claimant has not made an application to extend the time limit. It is notable that the Claimant sought a reconsideration in relation to a different part of the Judgment on 20 December 2021 and was therefore aware of the process. The application has been made more than 7 months after the end of the time limit. The basis on which the Respondent will have assessed its case, post Judgment, will be on the basis of the written reasons. There must be a finality of litigation and parties should not have a second bite of the cherry. The parties have been preparing for the remedy hearing since the case management hearing on 17 May 2022. In the circumstances it is not in accordance with the overriding objective or interests of justice to extend time.

11. In any event the claim for failing to make reasonable adjustments is based on the substantial disadvantage caused by the provisions, criteria or practices ("PCPs") relied upon by the Claimant, namely: (1) The Respondent required employees to meet targets and deadlines, and (2) it required projects to be completed on time. After considering the evidence it was concluded that the Claimant's workload was not reduced and the ADR deadline moved until the end of January/beginning of February 2018. The duration of the time when the Claimant's workload was not reduced and the deadline maintained was considered and set out in the written reasons. The factual findings and conclusions were made on the balance of probabilities, based on the evidence and submissions heard during the hearing. The Claimant withdrew his allegation that the Respondent had a PCP to return employees to the same department and management after the rejection of a grievance. The Claimant's application conflates the substantial disadvantage relating to the PCPs relied upon and other unrelated matters. For the reasons set out in the Judgment, the duration of the effect of the substantial disadvantage caused by the PCPs relied upon and the reasonable adjustments required to remove that disadvantage were considered. There needs to be a finality of litigation and a reconsideration is not an opportunity for a party to have a second bite at the cherry.

12. 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.

Employment Judge J Bax
Date: 27 July 2022

Judgment sent to Parties: 28 July 2022

FOR THE TRIBUNAL OFFICE