EMPLOYMENT TRIBUNALS

BETWEEN
MRS GEORGINA SPOOR

Claimant

AND

THE GOVERNING BODY OF ST ANDREW'S CE HIGH SCHOOL

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD on the papers **ON** 15th August 2022

EMPLOYMENT JUDGE H Lumby

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 28 June 2022 which was sent to the parties on 27 July 2022 ("the Judgment"). The grounds are set out in her email dated 3 August 2022. That email was received at the tribunal office on 3 August 2022.
2. This reconsideration has been on the papers alone as I did not consider that a hearing is necessary. The order made is described at the end of these reasons.
3. 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.

4. 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.
5. 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.
6. The ground relied upon by the claimant is that new legal evidence has come to light which clarifies the role of SENCo and so proves the role was not redundant in any form, on which basis she cannot have made redundant and so was unfairly dismissed.
7. The claimant has referred the tribunal to case law, statutes and guidance which she had not referred to in the hearing or the evidence provided before it. In terms of statute and case law, this all predated the hearing, generally by many years. A similar comment could be made about much of the guidance and publications referred to.
8. 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. Much of this was in fact considered by the tribunal in reaching its original determination, being long established law.
9. Rule 70 of the Rules provides a single ground for reconsideration, being the interests of justice. This replaced the previous test, which gave five grounds for reconsideration; one of these was that new evidence had become available since the conclusion of the tribunal hearing to which the decision related, the existence of which could not have been reasonably known of or foreseen at that time. However, it is clear that, following Outasight VB Ltd v Brown [2015] ICR D11 EAT that the interests of justice test can be viewed through that lens. The EAT confirmed in that case that the test set out by the Court of Appeal in Ladd v Marshall 1954 3 All ER 745, CA
10. In that case, the Court of Appeal established that, in order to justify the reception of new evidence, it is necessary to show three separate matters – that the evidence could not have been obtained with reasonable diligence for use at the original hearing, that the evidence is relevant and would probably have had an important influence on the hearing and, finally, that the evidence is apparently credible.
11. Applying the Ladd v Marshall test, I find that almost all the new evidence put forward by the claimant would have failed the first test; the few items that are genuinely new and could not have been obtained with reasonable diligence would have failed the second test, in that they would not have had an important influence on the hearing. An example of this is the subsequent discovery of the latest Ofsted rating for the school; what was important here was the approach taken by the respondent at the time of the redundancy process, the subsequent Ofsted rating is irrelevant.

12. Accordingly, I do not find that the determination in this case should be reconsidered by virtue of the purported new evidence as this does not pass the tests in Ladd v Marshall. I do consider that it is in the interests of justice to allow the claimant a second bite of the cherry because she did not bring to the tribunal's attention evidence that was available in support of her case at the original hearing. Furthermore, I do not consider that this evidence would have changed the outcome in any event. Finally, considerations of interests of justice should also have regard to the need for finality in litigation.
13. 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".
14. 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.
15. Taken this together, I do not consider that it is in the interests of justice to reconsider the original judgment.
16. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the judgment dated 28 June 2022 being varied or revoked.

Employment Judge H Lumby
Dated 15 August 2022

Judgment sent to Parties: 30 August 2022
FOR THE TRIBUNAL OFFICE