



EMPLOYMENT TRIBUNALS

Claimant
Mrs S Hunter

and

Respondent
Lorne Stewart plc

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 11 October 2022, Reasons for which were sent to the parties on 19 October 2022. The grounds are set out in her application of 25 October 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. 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 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.

5. The Claimant relies upon a number of arguments in her email, which will be addressed in turn;
 - 5.1 Mr Cox's evidence;

The Claimant did not assert that Mr Cox's statement ought not to have been admitted on the basis of late service, nor did she request more time to compose questions for him. It was, in any event, of marginal relevance. The point made in paragraph 5.3 of the Reasons was demonstrated by the notices in the hearing bundle which the Claimant had admitted that she had displayed;
 - 5.2 The Claimant's views in relation to the Covid-19 pandemic and the Government's reaction to it;

Whilst it is true to say that the Claimant was asked some questions about her views on Covid and the lockdowns, it was not a fair representation to suggest that the Respondent's representative "*spent most of the hearing*" questioning her on that topic. As was said in paragraphs 7.4 and 7.5 of the Reasons, the issue was not directly relevant to the issue of disability, but was nevertheless relevant to an assessment of the Claimant's credibility, which was particularly important in the case since there was an absence of helpful medical evidence.
 - 5.3 The Claimant's ability to call other family members as witnesses;

The Claimant did not raise this issue at the hearing but there was nothing within the Case Management Order of 7 April 2022 which limited her to calling a particular type of witness. It was clear, from paragraph 26 of that Order, that there had been some discussion with Employment Judge Rayner as to the evidence that she had intended to call. She was entitled to add to that evidence (paragraph 13 of the Order) and did so.

- 5.4 The Judge (and Respondent) are not medical professionals;
The Claimant alleges that, since neither the Judge nor the Respondent were medical professionals, it ought not to have been possible for them to have assessed her condition.
The Claimant claimed to have suffered her disability from 23 July 2020. Three letters from her GP had been served, all of them written when the country had been out of lockdown, none of which supported or corroborated the Claimant's assertion of disability and the Judge therefore had to base his assessment on the Claimant's own testimony which, for the reasons explained, he did not find credible in certain material respects.
6. It should be that noted that, of the points made by the Claimant in her application, she did not address the difficulty explained in paragraph 7.6 of the Reasons relating to the long-term requirement within s. 6 of the Act which was found not to have been met on two bases.
7. 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
Date: 27 October 2022

Judgment sent to Parties: 03 November 2022

FOR THE TRIBUNAL OFFICE