



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr Cefyn Jones

Respondent
AND Hemp Trades Association Limited
Trading as Cannabis Trades Association

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON 28 October 2022

EMPLOYMENT JUDGE N J Roper

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 reserved judgment dated 13 October 2022 which was sent to the parties on 19 October 2022 ("the Judgment"). The grounds are set out in his email letter dated 27 October 2022. That letter was received at the tribunal office on the same day 27 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 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 relate to paragraphs 141, 142, 143 and 144 of the Judgment only. This is the section of the Judgment which explains why those claims which might otherwise have been successful have been dismissed because they were presented out of time. The reasons for delay now put forward by the claimant include that there was a delay in obtaining the ACAS Early Conciliation Certificate because the respondent refused to conciliate, and the claimant was subsequently unable to resubmit his complaint any earlier because he had difficulty obtaining legal advice and/or was spending time developing his own business.
 5. The difficulty which the claimant now faces is that out of time issues were always clearly identified in the List of Issues which the Tribunal would have to determine the full main hearing of the case. The respondent was aware of this, and its pleaded case, and evidence and submissions at the hearing, dealt with this matter and explained its assertion as to why the claim had been submitted out of time. Unfortunately, however, the claimant did not. The claimant did not address this issue in his evidence, and he did not present any case to seek to convince the Tribunal that it would be just and equitable to extend time, and the respondent was not in a position therefore to respond to any such arguments.
 6. All other matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its unanimous 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 this case the claimant was always on notice that out of time issues would be considered by the Tribunal, and the respondent at least partly defended the claim on that basis. The claimant did not take the opportunity at the hearing to present any of his arguments which he now presents relating to time issues. In these circumstances I do not consider that it is in the interests of justice to re-open the hearing to determine now any subsequent arguments as to whether time should be extended. It is in the interests of all parties, and other Tribunal users, that there should be finality in litigation.
 10. 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 N J Roper
Date: 28 October 2022

Judgment sent to Parties: 07 November 2022

FOR THE TRIBUNAL OFFICE