EMPLOYMENT TRIBUNALS

Claimant: **Mr Ibrahim Ali**

Respondent: **(1) SM Global Consultancy Limited (t/a Staffing Match)**
(2) Co-operative Group Limited

Held in Chambers at Bristol **On: 10 November 2022**

Before: **Employment Judge Gibb**

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 oral judgment given at the hearing held on 29 September 2022 ("the Judgment"). The grounds for reconsideration are set out in his three emails dated 7 October 2022 and further emails dated 8 October and 17 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 ET 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 Claimant's 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 in his emails can be distilled as follows:

    i. He had expected to attend the hearing in person. When he arrived at the Tribunal he was informed it was by video link. He had issues with the video link and joined by telephone, but the line was not great. He had brought evidence for the Tribunal hearing but had not had enough time to present his evidence and / or had not been able to present his evidence in court. He had obtained ACAS early conciliation certificates as required.

    ii. He had informed ACAS that the names of the Respondents were not spelled correctly on the early conciliation certificates and ACAS had informed him that the Tribunal would 'make it right'. He wished to correct the spellings of the Respondents' names on the employment tribunal court forms.

5. 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".

6. 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.

7. 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'*.

8. The Claimant's reconsideration application therefore relies upon two limbs: (1) the hearing was not in person and he was unable to present his evidence in full. He had contacted ACAS as required and obtained the early conciliation certificates; and (2) the ACAS early conciliation certificates had misspellings of the Respondents' names but were otherwise valid.

9. During the course of the hearing, the Claimant informed the Tribunal that he wished to submit a further ACAS early conciliation certificate in respect of the Second Respondent. Only one ACAS early conciliation certificate had been provided in respect of the First Respondent. The Claimant was permitted to email in this further document during the hearing. The email he sent did not have a document attached but instead contained a cut and paste copy of an ACAS early conciliation certificate without the Respondent's name, or any name. The Claimant did not ask to email in any further documents.

10. The second ACAS early conciliation certificate now submitted by the Claimant in respect of the First Respondent bears a different number to that shown in his 29 September 2022 email to the court. Notwithstanding that discrepancy, it has an early conciliation number: R122433/22/14 and identifies the First Respondent as 'Staffing Match'. It shows that the date of receipt by ACAS and the date of issue were both 22 February 2022.

11. The Claimant in this case issued his ET1 against the Respondents before he had obtained either of his early conciliation certificates. The ET1 was issued on 19 January 2022 and the ACAS early conciliation certificates were both applied for and obtained over a month later on 21 & 22 February 2022 respectively.

12. This is a comparable set of facts as arose in the case of Pryce v Baxterstorey [2022] EAT 61 where the EAT rejected the claimant's appeal. It held that where the claimant had failed to obtain an early conciliation certificate prior to issue, there was no jurisdiction to waive the requirement to re-present the claim and if there were, it would undermine the express statutory requirements of section 18A(8) of the Employment Tribunals Act 1996 ("ETA 96") which states that a person may not issue 'relevant

proceedings' without a certificate specified under section (4), in this case an early conciliation certificate.

13. There is provision in rules 12 & 13 of the ET Rules for rejection of claim forms if they do not comply with the requirements about providing an early conciliation certificate number. It is regrettable that the this was not picked up when the ET1 was submitted; nevertheless, Rule 12(2) applies and the Claimant's claims were dismissed on the grounds that the Tribunal lacked jurisdiction. The Claimant has not put forward any further evidence or argument to challenge that finding. Given this conclusion, the Claimant's arguments set out at paragraph 4(ii) above do not assist him further.

14. By virtue of section 18A(8) ETA 96 the Tribunal had no jurisdiction to consider the Claimant's claims.

15. 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 Gibb
Date: 10 November 2022

Judgment sent to Parties: 18 November 2022

FOR THE TRIBUNAL OFFICE