EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: **Christian Mallon**

Respondent: **Electus Recruitment Solutions Limited**

Before: Employment Judge Halliday

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 19 September 2022 which was sent to the parties on 29 September 2022 ("the Judgment"). The grounds are set out in his email dated and sent on the 29 September 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 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 as set out in his email are that: he struggles with writing reports; he has a PhD and other qualifications; he was refused an oral application; he questions the veracity of the respondent's evidence and specifically the evidence given in relation to the calls held between him and the respondent; he refers to his experience in energy in Aberdeen; he also refers to his previous and aspirational salary levels and to the large number of jobs he has applied for and the few interviews he has been offered. He asks for the emails he sent to be re-reviewed and states that he does not understand why despite providing additional information about his disability it is still not considered. He refers to his subsequent diagnosis of ADHD.

5. The claimant has also attached a statement of legal principles and three cases: *Mr O'Sulllivan v London Borough of Islington Case no 2207632/2016, British Telecommunications Plc v Meier GIR11016 dated 29/07/2019* (both of which were before the tribunal at the hearing of this matter), and the decision in *Mr T Sherbourne v N Power Ltd: 1811601/2018*. The legal principles and the first two cases were considered in the hearing and the *Sherbourne* case, a first instance decision, raises no new legal issues.

6. The claimant sent a further email on 30 September with a link to a video of a talk titled: Great Minds think different, Neuro diversity in Brighton.

7. The matters raised by the claimant in his email of 29 September 2022 had already been considered by the tribunal before it reached its unanimous decision and additional information relating to neurodiversity would not affect the findings reached.

8. 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".

9. 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.

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 Halliday
Date: 7 November 2022

Judgment sent to Parties on
14 November 2022

FOR THE TRIBUNAL OFFICE