Case No: 2300627/2021
2302103/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Bramall**

Respondent: **Flow Logistics Limited & Ors**

JUDGMENT ON APPLICATION FOR RECONSIDERATION

It is in the interests of justice to vary the judgment on a preliminary issue dated 29 September 2022 to be varied to allow the claimant's claims against Nexus Workforce Limited t/a Flow Logistics in substitution of Flow Logistics Limited.

REASONS

1. A reserved judgment on a preliminary issue dated 29 September 2022 was sent to the parties on 14 October 2022 (the "Judgment"). In the Judgment, I refused to substitute the respondent ("Nexus") for Flow Logistics Limited ("Flow Logistics") (in claim 2300627/2021).

2. On 28 October 2022 the claimant's representative wrote to the Tribunal indicating that the claimant requested that the Judgment be reconsidered. The claimant submits that in accordance with rule 70 of the Rules of Procedure it would be in the interests of justice for the Judgment to be varied to allow the claims against Nexus to proceed.

3. I considered the application at the "sift" stage and considered that it had a reasonable prospect of success. The respondents were invited to respond by 21 November 2022. The claimant indicated that a hearing on the application was unnecessary and could be dealt with on the papers. The respondent has not responded, as requested. Consequently, I have made

my decision on the basis of the papers and the submissions the respondent made at the preliminary hearing.

4. In summary, the application for variation proceeds as follows:

    a. None of the reasons provided by me in the Judgment in paragraph 45 (c) are relevant to the issue as to whether the claimant made a genuine mistake. Instead, it is submitted that they relate to whether it was reasonable for the claimant to have made such a mistake. It is further submitted that the reasons provided do not show that the claimant was in fact unreasonable.

    b. The claimant submits that he made a genuine mistake and was unaware that when issuing the First Claim that Flow Logistics was only a trading name. He submits that he believed it to be the legal name of his employer and was entirely unaware of the legal entity that is named as the respondent.

    c. The Judgment focuses on the reasonableness of the claimant in making the mistake and fails to determine whether the claimant made a genuine mistake.

5. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

    70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ('the original decision') may be confirmed, varied or revoked. If it is revoked it may be taken again.

    71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

    72 (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

> *72 (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

6. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a judgment could be reviewed. The only ground in the 2013 Rules is that a judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by **Eady J in Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.

7. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord McDonald said that the review (now reconsideration) provisions were

> *Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before.*

8. In the case of **Fforde v Black EAT68/80** where it was said that this ground does not mean:

> *That in every case where a litigant is unsuccessful 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 even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order.*

9. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/8**1 where it was stated:

> *When you boil down what is said on (the claimant's) behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, 'justice' means justice to both parties.*

10. I have considered the contents of the claimant' application carefully. I am using defined terms as set out in the Judgment.

11. Following **Drinkwater Sabey** (which I referred to in the Judgment), where a claimant does not know the name of an individual he or she wishes to join as respondent but makes his or her wishes clear and applies to do so as soon as the name becomes known, the application should be granted.

12. In **Parveen v International Dance Shoes Ltd and anor EAT 0447/10** the claimant resigned and brought proceedings against her employer claiming unfair constructive dismissal and discrimination on the ground of sex or pregnancy. In her ET1 she stated: 'Regarding the manager "Harry" referred to at section 5.2, I reserve the right to join him as a second respondent in these proceedings once his full name is disclosed by the first respondent.' The respondent referred to the manager's full name in the ET3. Accordingly, the claimant applied to the tribunal for permission to join him as a respondent, referring to the fact that she had expressed an intention in the ET1 to do so once she knew his name. An employment judge refused her application on the ground that any claim against an additional respondent would be out of time.

13. The claimant appealed, arguing that the judge's reason for refusing the application was wrong, given the decision in the **Drinkwater Sabey** case that the fact that an application to join a further party was out of time was not an absolute bar but simply a matter to be taken into account as a matter of discretion. The EAT agreed, noting that this was in accordance with other decisions on the question of adding fresh causes of action, such as, for example, Transport and **General Workers' Union v Safeway Stores Ltd EAT 0092/07**. The EAT could see no reason to refuse the application, given that the claimant's reasons for not naming the respondent in the original ET1 were understandable and that she had made her position plain from the start and then acted promptly as soon as she had the necessary information. No possible prejudice could have been done by the delay in formally joining the party concerned.

14. In the First Claim, the claimant's ET1 cited Flow Logistics as the first respondent. The ET1 was prepared by the claimant's solicitor who is identified as Kate Robinson at Leigh Day. Paragraph 3 of the grounds of complaint state:

> *The Claimant was never informed of the specific Amazon entity for which he was working (and which determine the terms of his work) and he has therefore named five separate Amazon entities which operate in the UK as Respondents. For the purposes of these Grounds of Claim, the Second to Sixth Respondents are referred to collectively as "Amazon". The Respondents are invited to confirm which Amazon entity the Claimant was delivering parcels for, so that the claims can proceed against the correct entity.*

15. It is noteworthy that the claimant did not specifically refer to having doubts about the first respondent (i.e. Flow Logistics). He was uncertain about the Amazon entities (i.e. the second to sixth respondents). Had he been unsure about the correct identity of the first respondent (i.e. Flow Logistics), he would or should have stated that in his particulars of claim. He does not state that he is unsure whether he has correctly identified Flow Logistics as the first respondent. Indeed, in paragraph 5 of the grounds of complaint, he claims that he was an employee or worker of Flow Logistics. In paragraph 6 of the grounds of complaint, he states that, in the alternative, he was an agency worker of Flow Logistics. In paragraph 39 of the grounds of complaint her states that he was required to work personally for Flow Logistics.

16. However, in the Second Claim, the claimant states

> *The Claimant has an existing claim against six respondents in the South London Employment Tribunal (claim no. 2300627/2021). The First Respondent to these proceedings is an entity called Flow Logistics Ltd. On 25 March 2021, the Claimant's representatives received an email from the representatives of Nexus Workforce Ltd t/a Flow Logistics, stating that this is the entity that engaged the Claimant.*
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> *As a result, the Claimant is also submitting this claim against Nexus Workforce Ltd t/a Flow Logistics. For ease of reference, the Claimant has referred to this entity as the Seventh Respondent in the Grounds of Claim attached to this ET1.*

17. In the particulars of claim for the Second Claim, the claimant pleads:

> *c. On 25 March 2021, the Claimant's representatives received an email from Doyle Clayton Solicitors stating that they represent "Nexus Workforce Ltd t/a Flow Logistics". Doyle Clayton stated that Nexus Workforce Ltd t/a Flow Logistics was the entity that engaged the Claimant, rather than Flow Logistics Ltd (the First Respondent).*
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> *d. In reliance upon the information provided by Doyle Clayton, the Claimant is now also bringing his claim against Nexus Workforce Ltd t/a Flow Logistics, which is the Seventh Respondent listed in these Grounds of Claim.*

18. For the reasons given by the claimant in his application, I am prepared to accept that when he issued the First Claim against Flow Logistics, he made a genuine mistake. I also take the point made in paragraph 7 of the application for reconsideration relating to the use of Flow Logistics as a trading name. I also take the point made in paragraph 8 of the application.

19. On the question of hardship, I accept the reasoning set out in paragraph 27 of the application. The claimant would be deprived of all claims against the respondent. I take the point that the respondent is aware of the litigation and was seised of this knowledge at a very early stage. There will be no material prejudice to the respondent.

20. The first respondent in the First Claim (Flow Logistics Limited) is substituted with Nexus Workforce Ltd t/a Flow Logistics Limited.

29 November 2022

Employment Judge **A.M.S Green**