EMPLOYMENT TRIBUNALS

Claimant: **Miss F Bennett**

Respondent: **Urbanbubble Liverpool Limited (In Creditors' Voluntary Liquidation)**

JUDGMENT

1. The Tribunal waives the requirement to copy the claimant's application for a reconsideration to the respondent.

2. The claimant's application dated **24 September 2022** for reconsideration of the judgment sent to the parties on **22 September 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. By an email dated 24 September 2022 the claimant raised a complaint against the judgment in this case sent to the parties in writing on 22 September 2022 ("the Judgment"). Her email was referred to Regional Employment Judge Franey. On 11 October 2022 he directed that it be referred to me and treated as an application for reconsideration of the Judgment. In these reasons I refer to that email of 24 September as "the Application". The claimant sent a further email on 29 September 2022 providing further information which I have also taken into account in making my decision on the Application.

2. I considered the application in chambers on 3 January 2023.

3. The Judgment was made under Rule 21 of the Employment Tribunal Rules 2013 ("the ET Rules"). I had struck out the respondent's response to the claim because the respondent's liquidator had confirmed that that response was not being actively pursued.

4. In the Judgment I upheld the claimant's complaints of unfair dismissal; for a statutory redundancy payment; and of breach of contract/failure to pay notice pay. I awarded total compensation of £1661.25. That reflected my finding that the claimant had given notice of resignation on 27 January 2020 so her employment would have ended on 26 February 2020 even had there not been an unfair dismissal on 20 February 2020.

Relevant Law

5. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the ET Rules).

6. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties or within 14 days of the date that written reasons were sent (if later). It must be copied to the other party (rule 71 of the ET Rules).

7. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET Rules). If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).

8. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the 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 (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).

9. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

> "a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

10. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All**

ER 745, CA will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the original hearing
- that the evidence is relevant and would probably have had an important influence on the hearing; and
- that the evidence is apparently credible.

11. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

The claimant's reconsideration application

Procedural points

12. The Application was made within 14 days of the parties being sent the Judgment. It was made in time. However, it was not copied to the respondent as required by rule 71 of the ET Rules. At the rule 72(1) preliminary stage the Tribunal should not seek any response to the application from the respondent (**TW White and Sons Ltd v White EAT 0022/21**). Given that, and the fact that the respondent is not taking an active part in these proceedings because of its liquidation, I consider it just to waive the requirement for the application to be copied to the respondent.

The substance of the claimant's application

13. The background to the Judgment was my reserved judgment sent to the parties on 22 February 2022 in which I decided that the claimant's employment (and the employment of those claimants whose cases were joined with hers) did not transfer under TUPE to other respondents since dismissed from these proceedings. That meant that the claimant's claim was against the respondent only.

14. On 1 July 2022 the Tribunal wrote to all the claimants in the joined cases against the respondent to confirm that Judgment could be given under Rule 21 of the ET Rules without a hearing. The Tribunal indicated that since the position appeared to be that the claimants' jobs disappeared on 20 February 2020, any compensation for loss of earnings after dismissal would be zero. The claimants were given the opportunity to provide updated schedules of loss and to set out in particular reasons why compensation should be awarded for loss of earnings after dismissal. They were asked to confirm whether they were happy for the compensation to be decided without a further hearing. The claimant confirmed she was happy for compensation to be decided without a hearing.

15. The claimant's email of 24 September 2022 sets out 4 numbered points. The first is that I was aware that the respondent was in liquidation and should have taken that into consideration in reaching my decisions in the case. The second is that the directors of the respondent, Mr and Mrs Howard, are also directors of other urbanbubble Ltd companies and have "assets in other parts

of their business which has been overlooked". Clearly, the respondent being in liquidation impacts on the claimant's ability to recover amounts awarded in the Judgment. However, that does not alter the legal position which is that the claimant's employer was the respondent and so Judgment is correctly issued against it. Those points do not provide grounds for varying the Judgment.

16. The third numbered point makes two points. The first is that "the sales and letting team at the respondent were given opportunity to be transferred to "urbanbubble ltd" to work on their Manchester sites". As I understand it, the claimant is saying that it is at least arguable that her role would have transferred to urbanbubble ltd after 20 February 2020 so that she should receive compensation for loss of earnings after that date. The claimant was not part of the sales and letting team. Even if she were right that her employment would have continued beyond 20 February 2020, however, it would have come to an end on 26 February 2020 when the month's notice she had given when she resigned on 27 January 2020 came to an end. The claimant does not in the Application dispute the finding that her employment would have ended on 26 February 2020 because she had resigned. The Judgment already compensates for the period from 20 February to 26 February 2020 by awarding her damages for breach of contract for that period. In those circumstances it would not be in the interests of justice to vary the Judgment based on this point.

17. As part of that third numbered point the claimant also says that another member of concierge staff was kept on by Urban Evolution (the former second respondent to the claim) and that she considers that to be discrimination. That does not provide a basis for reconsidering the decision against the respondent in this case. In any event, the claimant at a preliminary hearing on 3 December 2020 confirmed that she was not bringing a discrimination case (paragraph 9 of my Case management order dated 14 December 2020).

18. The fourth point made is that the respondent did not turn up for hearings, showing no respect for the Tribunal or its former employees. That does not provide a ground for varying the Judgment.

19. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of the claimant's application for reconsideration leading to the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Employment Judge McDonald
Date___30 January 2023

Case No: 2403508/2020

JUDGMENT SENT TO THE PARTIES ON

31 January 2023

FOR THE TRIBUNAL OFFICE