



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr C-L Nicoara

AND

Respondent

City Arms Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 22 February 2023

EMPLOYMENT JUDGE J Bax

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 Judgment and Written Reasons dated 15 December 2022 which were sent to the parties on 22 December 2022 ("the Judgment"). The grounds are set out in its e-mails dated 8 December 2022, which also requested written reasons, 10 January 2023 and 30 January 2023. The Judgment, without reasons, was sent to the parties on 2 December 2022. After the receiving the application for reconsideration on 8 December 2022, the parties were sent the written reasons and the Respondent was invited to make further representations by 10 January 2023.

2. On 23 January 2023, the Respondent was asked to clarify that it was seeking to reconsider the decision to proceed in its absence and the decision on liability and remedy. The Respondent was invited to make representations about receipt of the notice of hearing which included directions for the provision of documentation, the attempts to telephone it and the e-mail sent on the morning of the hearing. The Respondent was asked whether it consented to the application being considered on the papers. The Claimant was invited to make any representations and whether he consented to the application being considered on the papers.
3. Both parties consented to the application being considered on the papers.
4. 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.
5. 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.
6. The grounds relied upon by the Respondent in its e-mail dated 8 December 2022 are these:
 - a. That the Respondent was patiently waiting for a link to join the hearing, which was not received and was found a week later in a spam folder.
 - b. The Claimant walked out in mid-service leaving the pub in disarray and he resigned by letter dated 11 November 2021 which was handed in the next day.
 - c. He was only due 2 days holiday pay according to its records.
7. The additional representations dated 10 January 2023 were:
 - a. Not joining the hearing was due to a lack of computer skills and he wanted the pub manager to join any future hearing.
 - b. The facts in the Judgment were disputed, in that it was denied there was bullying, constructive dismissal was denied and the Claimant walked out.
 - c. The resignation letter showed the Claimant resigned of his own free will and there was no suggestion of discontent.
 - d. He was due 2 days of holiday.
8. The additional representations dated 30 January 2023 were:
 - a. Mr Ashmore did not know why the telephone calls did not connect to his mobile telephone and he did not receive an e-mail from the

- Tribunal, weeks later it was discovered by his secretary in his spam folder
- b. He wrongly assumed at the time that the case had been abandoned or struck out
9. The Claimant's representations included that the Respondent had not engaged with ACAS
10. At the hearing all documentation received by the Tribunal was considered, including the Respondent's e-mail dated 29 June 2022, which included its version of events.
11. 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".
12. 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.
13. 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’.

14. The application is made on the basis that the Respondent was unable to join the hearing because the link had gone to its spam folder. The e-mail communications were sent to the Respondent by way of the same e-mail address from which it sent its version of events on 29 June 2022.
15. There has been no suggestion that the Respondent did not receive the notice of hearing dated 4 July 2022 and which was sent to the same e-mail address. The Respondent knew of the hearing date because its e-mail dated 8 December 2022 it said it was waiting for the link. The Respondent also received the Judgment, Written Reasons and subsequent Tribunal correspondence sent to the same e-mail address. The Respondent did not comply with the case management directions.
16. The Respondent was telephoned on the landline number on the claim form, the Respondent having not included a telephone number on the response form.
17. Both parties were asked, by e-mail, to provide witness statements and documents relied upon for the hearing on 24 November 2022. The Respondent did not respond, despite it being sent to the same e-mail address referred to above.
18. It was significant that the Respondent did not attempt to telephone the Tribunal to find out what was happening with the hearing when it knew it was due to take place.
19. In the circumstances the Tribunal did all it could to contact the Respondent, as set out in the written reasons. The notice of hearing had been received by the Respondent and it failed to contact the Tribunal. There are limited resources for the Tribunal to use and there are many other cases which need to be heard. The Claimant was required to give evidence and prove his claim and the information previously provided by the Respondent in its e-mail dated 29 June 2021 and the response form was taken into account. The Tribunal proceeded in accordance with rule 47.
20. Taking into account the need to hear cases promptly, the needs of the parties and other Tribunal users, the attempts to contact the Respondent and that it was aware of the hearing and failed to contact the Tribunal and the need for finality of litigation the decision to proceed in the Respondent's absence was not wrong. The Claimant proved his claim and the decision was taken on the basis of the evidence available. In the circumstances it is not necessary in the interests of justice to reconsider the decision.

21. 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 J Bax
Dated 22 February 2023

Judgment sent to Parties on 08 March 2023

For the Tribunal office