EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss D Ireland-Cooper	AND	Bradleys Estate Agents Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON** 21 March 2023

EMPLOYMENT JUDGE N J Roper

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. This matter was heard by a full tribunal sitting in Bodmin over the three days of 16, 17 and 18 January 2023. At that hearing the claimant was represented by Miss T Jones of Counsel, and the claimant's instructing solicitor was also present. The respondent was represented by Miss G Nicholls of Counsel. During that hearing the claimant's claim of harassment

related to disability was withdrawn by the claimant and dismissed, but the claimant was successful in her claim for constructive unfair dismissal. The parties then agreed terms of settlement for the successful unfair dismissal claim. The written judgment on liability dated 19 January 2023 was sent to the parties on 7 February 2023 ("the Judgment"). The short form of judgment confirming that terms of settlement had been reached in connection with the successful unfair dismissal claim was dated 18 January 2023 and it was also sent to the parties on 7 February 2023 ("the Settlement Judgment").

2. The claimant is now acting in person. She has now applied for reconsideration of both the Judgment (only to the extent this relates to the decision to dismiss her claim of harassment related to disability), and for reconsideration of the Settlement Judgment. The claimant's application was made by email dated 21 February 2023.
3. 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.
4. 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.
5. The grounds relied upon by the claimant are these.
6. First, with regard to the Judgment, the claimant states that on 13 January 2023 she was informed by her legal representative copies that a list of key questions for cross examination of the respondent's witnesses had accidentally been sent to the respondent. On 16 January 2023 she instructed her solicitors to inform the Tribunal of this breach of confidentiality to ensure that she would be on an equal footing. In the event this information was not passed to the tribunal. The claimant asserts that because she had to give evidence first this affected her lack of confidence, and she was not on equal footing with the respondent. The tribunal subsequently indicated that the claimant's claim for harassment related to disability had little reasonable prospect of success and following advice the claimant agreed to withdraw this claim.
7. Secondly, with regard to the Settlement Judgment, the claimant asserts that "the tribunal ruled in my favour for my claim of unfair constructive dismissal and awarded three months' future losses. I ask for this award/judgment to be reconsidered as I have been deemed unfit to work by a Judge and Doctor until May 2024 as evidenced by the Tribunal decision included in the bundle."
8. In an email dated 24 February 2023 the respondent has objected in detail to the above application. The key points raised are that the privileged information which was accidentally sent was deleted without being reviewed; the respondent's witnesses did not have sight of any list of key questions which they would have to face during their evidence to the

tribunal; it is denied that the claimant was not on equal footing, particularly as she was represented throughout by her solicitor and her Counsel who were both present; the claimant's representatives had every opportunity to inform the tribunal of the suggested breach of privilege, but chose not to do so; these matters had absently no impact on the evidence given either by the claimant (who would normally give evidence first in any event), or the respondent; at no stage was the claimant instructed to withdraw her claims for harassment; the claimant was given the opportunity to consult in private with her solicitor and Counsel, and did so before deciding to withdraw her claim of harassment; the agreed settlement sum was reached by agreement during an adjournment and discussion between legal advisers for the respective parties, to which the claimant clearly agreed; and finally if the claimant has any concerns about the legal advice which she has received either from her solicitor or from her Counsel, then this is a matter which should be pursued directly with them and not by way of reconsideration of either the Judgment or the Settlement Judgment

9. I agree entirely with these submissions which have been made by the respondent in reply to the applications for reconsideration.
10. 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".
11. 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.

12. In Dafiaghor-Olomu v Community Integrated Care [2022] ICR 1329 the EAT held that reconsideration hearings should not be used by parties to change their position on the matter that had already been determined.
13. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of either the Judgment or the Settlement Judgment being varied or revoked.

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Employment Judge N J Roper
Date: 21 March 2023

Judgment sent to Parties on 30 March 2023

For the Employment Tribunal