EMPLOYMENT TRIBUNALS

Claimant: Mrs R Khamar

Respondent: PIE Pharma Limited

UPON APPLICATION made by letter dated 26 April 2023 to reconsider the judgment dated 12 April 2023 under rule 71 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The reserved judgment was sent to the parties on 12 April 2023. I allowed the claimant's claim of unfair dismissal and awarded the claimant £2616.71 in compensation.

2. On 26 April 2023, the claimant wrote to the Tribunal seeking a reconsideration of my judgment. They disagree with my calculation that the claimant's average working hours was 16.64 per week. They believe that the claimant's average working hours were 30.24 per week. If that is correct, the correct compensation payable is £4404.50.

3. I have carefully considered the contents of the claimant's application.

4. 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.

(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."

5. 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.

6. 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.

7. 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.*

8. 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 EAT262/81** 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.*

9. I have considered this application carefully. I have reached the view that a hearing is not necessary in the interests of justice. I considered the claimant and the respondent's submissions and the Excel Spreadsheet prepared by the respondent in support of their calculation before reaching my decision. I preferred the respondent's calculation as stated in paragraph 64 of the judgment. There is no reasonable prospect of the judgment being varied or revoked and the application for reconsideration is refused.

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Employment Judge **Green**

Date: 13 June 2023

JUDGMENT SENT TO THE PARTIES ON

23 June 2023

FOR THE TRIBUNAL OFFICE