



EMPLOYMENT TRIBUNALS

Claimant: Mr W Simson

Respondent: The Commissioners for Her Majesty's Revenue and Customs

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 dated 12 July 2022 which was sent to the parties on 18 July 2022. The grounds are set out in his application of 25 May 2023.

Principles

2. 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 significantly outside the relevant time limit.
3. Under rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
4. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at

the hearing, any error of law fell 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*”. More recent case law has suggested that the test 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) in order to ensure that cases are dealt with 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 stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

Application

5. The Claimant first raised the possibility of a reconsideration in an email dated 16 January 2023. He said that he had not anticipated the level of loss that he might have suffered through the loss of job. He was then struggling to find alternative work.
6. He was told on 13 February that, if he was to make an application for reconsideration, he would need to explain the reasons for the delay in doing so. His application was not then received until the 25 May.
7. The application needed to address two issues, therefore; the delay and the merits of the reconsideration issue.
8. As to the former, the delay seems to have been based upon the fact that the extent of the Claimant’s under compensation has been a gradual realisation as time has gone on. He also stated that he was ignorant of the ‘28-day ruling’, which is assumed to refer to the 14 rule within rule 71.
9. As to the merits, the Claimant has not actually indicated what element of the calculation of compensation was wrong or ought to be revisited. In fact, the Judgment reflects the fact that the figure for compensation was agreed and reached “*by consent*”. The essence of the application seems to be a broad assertion that he did not realise how much the dismissal would have impacted him and/or how long it might have taken him to find alternative work.

Conclusions

10. When a Tribunal assess compensation for unfair dismissal, it does its best, on the information available, to assess the likely losses going forward. For example, how long it might take for an employee to find alternative work, if they have not already done so. The tribunal process does not envisage the possibility of claimants returning to ask to have their awards topped up if the best estimates proved wrong, nor does it cater for the possibility that respondents might apply to reclaim compensation if a claimant does better than expected.
11. The reason for the delay in making this application (the Claimant's realisation over time that his losses were greater than he might have expected) is not a good one. Time ought not to be extended under rule 5.
12. Further and in any event, the application lacks specificity. It does not indicate what element of the award ought to be revisited, nor does it suggest how it ought to be altered. As stated in paragraph 10, since it is not suggested that the evidence at the hearing ought to have produced a different result, this application is really an attempt to revisit the calculation with the benefit of hindsight which, if granted, could lead to a wave of similar applications.
13. There is the added problem that the compensation figure was reached by agreement. The Claimant was recorded as saying that the judgment on liability 'restored his dignity and honour' and that he 'did not want to go further on remedy'. The figure of loss of £16,320 was agreed, which was then reduced under ss. 122 and 123.
14. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Livesey

Dated 8 June 2023

Judgment sent to Parties on
21 June 2023 By Mr J McCormick

For the tribunal office