EMPLOYMENT TRIBUNALS

Claimant: **Mrs S N Laique**

Respondent: **Al Iman Community Educational Services Ltd.**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held in Chambers at: Reading ET **On:** 10 July 2023

Before: Employment Judge G. King

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 reserved judgment dated 24 April 2023 ("the Judgment"). The grounds are set out in her email dated 18 May 2023 which was received at the Tribunal office on the same day.

2. This has been a remote hearing on the papers. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

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. 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.

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 Claimant are as below, copied from the Claimant's email:

> *The only point I want to mention is, the card that has been returned was not the ID badge, it was the magnetic card that opens all the door of the institute. It was our responsibility to return it at the end of every working day, as it belongs to the hired venue and it would represent a safeguarding issue. The ID badge is still with me. If, as the respondent claimed, the magnetic card was thrown with some noise on the table, it is because additional keys were attached to it. As this action was considered as a resignation from my side, I would like it to be reconsidered, even though we are out of the time frame.*

7. 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.

8. The ground relied upon by the Claimant is that she disputes that it was her ID badge that she returned to the Respondent, but says it was a keycard which would have been returned to the Respondent in any event.

9. The matters raised by the Claimant were considered in the light of all of the evidence presented to the Tribunal before it reached its decision.

10. Rule 70 of the Rules provides a single ground for reconsideration, being the interests of justice. This replaced the previous test, which gave five grounds for reconsideration; one of these was that new evidence had become available since the conclusion of the Tribunal hearing to which the decision related, the existence of which could not have been reasonably known of or foreseen at that time. However, it is clear that, following *Outasight VB Ltd v Brown* [2015] ICR D11 EAT that the interests of justice test can be viewed through that lens. The EAT confirmed in that case that the test set out by the Court of Appeal in *Ladd v Marshall* 1954 3 All ER 745, CA.

11. In that case, the Court of Appeal established that, in order to justify the reception of new evidence, it is necessary to show three separate matters – 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, finally, that the evidence is apparently credible.

12. Applying the *Ladd v Marshall* test, I have reviewed the notes of the hearing and the card in question was referred to as the Claimant's ID card throughout the hearing. The Claimant had opportunity to dispute this, or put forward any argument that it was a key card, not her ID card, during the hearing, but did not do so.

13. In any event, the Claimant returning this card was just one factor in the Tribunal's decision. The fact of it being a key card as opposed to her ID card would not have altered the Tribunal's decision.

14. Accordingly, I do not find that the determination in this case should be reconsidered by virtue of the purported new evidence or argument as this does not pass the tests in *Ladd v Marshall*. I do not consider that it is in the interests of justice to allow the Claimant a second attempt to present her case because she did not bring to the Tribunal's attention evidence and argument that was available in support of her case at the original hearing. Furthermore, there are important public policy reasons for the rule of finality in litigation. Importantly, reconsideration is not an opportunity to improve upon original submissions and/or to expand upon the same once the case has concluded. Nor is it an opportunity to continue to press the extent to which a Claimant feels that they have been treated unfairly by a Respondent.

15. 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".

16. 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.

17. Taking the above into account, I do not consider it is in the interests of justice to reconsider the original judgment and continue the litigation beyond the final hearing of the case.

18. 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.

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Employment Judge King

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Date: 10 July 2023

REASONS SENT TO THE PARTIES ON

11 July 2023

GDJ

FOR THE TRIBUNAL OFFICE