



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Race

**Respondent:** Mr Andrew Hooper trading as Teesdale Restaurant and Coffee Shop

**Heard at:** Newcastle CFCTC on the papers

**On:** 11 July 2023

**Before:** Employment Judge Fitzpatrick

## JUDGMENT ON RECONSIDERATION

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

### REASONS

1. The Respondent wrote to the Tribunal on 20 April 2023 raising concerns with the Judgment issued in this claim on 13 April 2023. This was not copied to the Claimant. He sent a further email to the Tribunal dated 29 May 2023 attaching a Judgment with Reasons in a different claim to which he was also respondent. This was not copied to the Claimant. On 27 June 2023 he copied both his emails and the attachment, and the correspondence he had received from the Tribunal to the Claimant. The email of 27 June 2023 with attachments has been treated as an application for reconsideration.
2. The Respondent's application consists of two brief emails, dated 20 April 2023 and 29 May 2023, together with Judgment and reasons issued in Case no 2500178/2023.
3. The application for reconsideration appears to be made on the basis that the Respondent was not afforded the opportunity to tell the Tribunal that the Claimant had resigned her employment at the beginning of July 2022 and as she was working her notice period at the Respondent (extended by mutual agreement until September 2022) when the Respondent's business closed at the beginning of August 2022 she was not entitled to a redundancy payment.

The law

4. Rule 5 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1, (“Tribunal Rules”) provides as follows:

**5. Extending or shortening time**

The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decisions, whether or not (in the case of an extension) it has expired.

5. Rules 70-72 of the Tribunal Rules provide as follows:

**70. Principles**

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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. Application**

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. Process**

(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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a

Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

6. Under rule 70 of the Tribunal Rules 2013, the Judgment will only be reconsidered where it is “necessary in the interests of justice to do so”. Rule 71 sets out the process for making an application, requiring the application to be made within 14 days of the date the judgment was issued and copied to the other parties. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.
7. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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, *Outasight VB Limited v Brown [2015] ICR D11*.
8. When deciding what is “necessary in the interests of justice”, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

### Conclusions

9. The correspondence that is being treated as an application for reconsideration was initially submitted to the Tribunal on 20 April 2023, before eventually being copied by the Respondent to the Claimant on 27 June 2023. As it was initially submitted to the Tribunal within the 14-day time limit (Rule 71) I have exercised discretion under Rule 5 of the Tribunal Rules to extend time and will consider the application.
10. As the claim was determined on the papers the Respondent did not have an opportunity at the hearing to orally advise the Tribunal of the Claimant’s resignation and that she was working her notice period when the Respondent’s business closed. However, that information is recorded in the response form. The claim form recorded a termination date of 7 July 2022. The response confirmed that the dates of employment the Claimant gave were correct. In box 4.3 of the response the Respondent set out “Kim was working her notice having gained a Chef post at Barnard Castle School. She was due to leave after a further two weeks”. I note there is a difference in the dates referred to in the Respondent’s application for reconsideration and the response form. This is not material as there is consistent reference to the Claimant being employed at the time of the closure of the business.
11. Had the Claimant’s employment terminated on expiry of her notice period the reason for dismissal would be resignation, rather than a dismissal by the employer. However, in the situation the Respondent has described, the closure of the business

took place before the expiry of the notice period. The closure of the business operated to end the Claimant's employment. Therefore, the Claimant's employment was terminated by the Respondent. As the Respondent closed the Claimant's place of work, this is a dismissal by reason of redundancy, and she is entitled to a redundancy payment.

12. The Respondent's application for reconsideration does not disclose any new information or evidence. The Respondent has not advanced any other argument as to why it is in the interests of justice to reconsider the decision.
13. For the reasons stated above, having considered the Respondent's application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. Under the provisions of Rule 72(1), as set out above, the application is refused and there is no requirement for the Claimant to respond to the Respondent's application.
14. A face to face hearing was not held because it was not required under the provisions of Rule 72(1) of the Tribunal Rules.

**Employment Judge Fitzpatrick**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 12 July 2023**

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