



EMPLOYMENT TRIBUNALS

Claimant
Mr S Dance

and

Respondent
Royal Devon University
Healthcare NHS Foundation Trust

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 24 May 2023 which was sent to the parties on 12 June 2023. The grounds are set out in his application of 28 June 2023.
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 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.

5. The Claimant’s application relates to the striking out of the complaint of unfair dismissal only.
6. The delay in making the application has been explained on the basis of “*deteriorating health and mental health*” but no details and/or medical evidence has been provided and that is not a sufficient reason for there to be an extension under rule 5 without more. The application is out of time.
7. Further and in any event, the Claimant’s email of 28 June describes an alleged employment or engagement relationship which extended for more than two years between him and the NHSP. He appears to accept that he was engaged through the NHSP as agency staff and, even if his assertion of a relationship which lasted for more than 2 years was correct, it is difficult to see how the Respondent would have been his ‘employer’ within the meaning of the Act.
8. The loss of the Claimant’s work and all future work with NHSP, if caused by the Respondent, can nevertheless be pursued as acts of discrimination within the remaining claim but, for all of these reasons, the application for reconsideration in relation to the complaint of unfair dismissal alone is dismissed because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Livesey
Dated 17 July 2023

Judgment sent to Parties on 03 August 2023

For the Tribunal Office