



EMPLOYMENT TRIBUNALS

Claimant: Mr MA Ghani

Respondent: NHS South, Central and West Commissioning Support Unit

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 31 July 2023 which was sent to the parties on 16 August 2023. The grounds are set out in his application of 14 August 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 inside the relevant time limit.
3. 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.

4. The Claimant's application appears to fall into four areas;
 - a. Challenges to the decision itself; see below;
 - b. Challenges to other decisions made in relation to case management leading up to the hearing (on 18 July); the Claimant's unhappiness about the course towards the final hearing is not something which is capable of being reconsidered by me in the context of this Judgment. Orders that were made on 18 July, or on other occasions, are not susceptible to reconsideration under the rules.

Many of the Claimant's concerns appear to relate to the part of the Reasons which relate to the application to amend which was dismissed. I acknowledge that a separate Order ought to have been drawn in which the amendment was formally dismissed, but the Reasons within the Judgment on the 'without prejudice' issue clearly explain that the application was dismissed and why that had occurred. Such an order would not have been susceptible to reconsideration in any event;

- c. Challenges to the procedure that was adopted at the hearing and the Respondent's supply of documentation; the Respondent's email of 16 August correctly set out my understanding of genesis of the documentation at the hearing. See, also, paragraph 2.2 of the Reasons.

As to paragraph (2) of the Claimant's application, the reason for the hearing had been set out in clearly in earlier correspondence from the Tribunal and, in case of doubt, paragraph 2 of the Order and paragraphs 23-25 and 27.4 of the Case Summary of 18 July 2023;

- d. Assertions in relation to my conduct; the Claimant has raised a complaint about my conduct. That issue is being dealt with under a separate procedure.

5. In relation to (a), the Claimant's application contains many assertions of unfairness as a result of the single allegation which was affected by the ruling being dismissed. What he has *not* addressed, or addressed in a manner which identifies any new or compelling argument, is any reason why the decision was wrong and, therefore, ought to be altered.
6. 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 18 August 2023

Judgment sent to Parties on 07 September 2023

For the Employment Tribunal