THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE TRUSCOTT KC**

BETWEEN:

Mr B Mehmet **Claimant**

AND

Forest Road Brewing Company Limited
Respondent

JUDGMENT upon RECONSIDERATION

1. The Tribunal grants the application for reconsideration of the Tribunal's judgment dated 27 February 2023 to the following extent:
The correct name of respondent is Forest Road Brewing Company Limited.

2. Otherwise, the application is rejected.

REASONS

1. By way of a letter dated 26 September 2023, the respondent made an application for a reconsideration of the judgment and reasons of this Tribunal sent on 15 September 2023.

2. Any application for the reconsideration of a judgment must be determined in accordance rules 70 to 74 of the Employment Tribunal Rules of Procedure 2013.

Rules
3. The relevant Employment Tribunal rules for this application read as follows:
RECONSIDERATION OF JUDGMENTS

Principles

70. 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.

Application
71. 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.

Process
72.— (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.

4. In accordance with rule 70, a Tribunal may reconsider any judgment "*where it is necessary in the interests of justice to do so*". On reconsideration, the decision may be confirmed, varied or revoked. If it is revoked, it may be taken again.

5. The case authorities remind Tribunals that there is no automatic entitlement to reconsideration for any unsuccessful party. On the contrary, there is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Reconsideration of a judgment should be regarded as very much the exception to the general rule that Tribunal decisions should not be reopened and relitigated. In

reference to the antecedent review provisions, in **Stevenson v. Golden Wonder Ltd** [1977] IRLR 474 EAT, Lord McDonald said that the (exceptional) process was '*not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before*'.

6. Earlier guidance as to the approach of Tribunals to the matter of reconsideration remains equally pertinent. In **Trimble v. Supertravel Ltd** [1982] ICR 440, the EAT made the following observations:

6.1. it is irrelevant whether a tribunal's alleged error is major or minor;

6.2. what is relevant is whether or not a decision has been reached after a procedural mishap;

6.3. since, in that case, the tribunal had reached its decision on the point in issue without hearing representations, it would have been appropriate for it to hear argument and to grant the review if satisfied that it had gone wrong;

6.4. if a matter has been ventilated and properly argued, then any error of law falls to be corrected on appeal and not by review.

7. When dealing with the question of reconsideration, a Tribunal must seek to give effect to the overriding objective to deal with cases 'fairly and justly'. The Tribunal should also be guided by the common law principles of natural justice and fairness. Her Honour Judge Eady QC (as she then was) gave guidance as to the approach to be taken in **Outasight VB Ltd v. Brown** [2015] ICR D11 EAT. Although a tribunal's discretion can be broad, it must be exercised judicially "*which means having regard not only to the interests of the party seeking the review or 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*".

8. The claimant does not have the requisite 2 years' service to claim "ordinary" unfair dismissal. The narrative in the ET1 led the Tribunal to register the claim under PID. The respondent was sent a notice of the claim on 26 October 2022. The respondent filed an ET3 which made reference to harassment by the claimant and the letter of dismissal. In paragraph 14 of the judgment it is narrated that:

> On 9 November 2022, the respondent was asked by the Tribunal whether it intended to tick the box indicating the claim was not defended. The respondent replied on 24 November asking if the case had ended. On 13 December 2022, the respondent was informed that in the light of the claim not being defended, judgment might be issued against it.

9. To further expand upon the foregoing narrative, the letter of 9 November 2022 asked the respondent to reply by 16 November. The respondent replied on 24 November as above. The letter asks " Can you confirm that the case has ended please." On 13 December 2022, the Tribunal wrote to the respondent "In your response to the claim you stated that no part of it is contested. Under rule 21 of the above Rules, a judgment may now be issued. You are entitled to receive notice of any hearing but you may only participate in any hearing to the extent permitted by the Employment Judge who hears the case.." On the same date, the claimant was asked set out what he was claiming with

supporting documents. On 13 February 2023, standard orders were issued in relation to the steps to be taken in preparation for the hearing which required the respondent to take certain steps. These orders would not ordinarily be applicable where the participation of the respondent had been limited. In the prehearing check of 14 August 2023, parties were asked to confirm if the hearing was proceeding. The standard terms of the letter again indicate that action is required from the respondent but this would not apply in the present case. On 14 August, the claimant confirmed he wishes to continue with the case. The respondent replied as follows:

> "Hi there
> If the claimant would like to continue wasting your, my and tax-payers money he is welcome to continue doing so.
> As mentioned numerous times, the claimant was terminated for breaching company conduct as stated in our company policy and handbook.
> Termination letter was served on the same day (attached).He is owed no money and therefore this case need not continue.
> If he would like to continue with his game, I will happily be there on September 8th to show the court his termination letter.
> There's nothing else to say from my side.
> Thank you
> Pete"

10. At the hearing, this Tribunal wished to be satisfied that it had jurisdiction to hear the claim. Although the claim had been registered as PID, the claimant confirmed that he was bringing a health and safely case. Hence the narrative in paragraphs 3 and 10 of the reasons. It is not known if the respondent was ever told that the claim was proceeding as a health and safety claim. The Tribunal then proceeded to award compensation.

11. To turn to the heads of the respondent's application

1. The claimant did not actively pursue the claim. According to the foregoing, the respondent is noted as not contesting the claim.
2. The judgment deals with evidence never disclosed to the respondent. As the respondent was not contesting the claim, he could only participate to the extent permitted. This would have been likely to be limited addressing the award of compensation. It is not known if the information before the Tribunal for this purpose was provided to the respondent but it was provided to the Tribunal on 6 September. The respondent joined the hearing too late to participate in that exercise.
3. The judgment was made in the respondent's absence. This is correct. Reference has already been made in the judgment to the contradictory statements made by the respondent in relation to knowledge of the date of the hearing.
4. There are reasonable prospects of successfully defending the claim. The Tribunal does not agree. The Tribunal does not find itself in agreement with the narrative now provided by the respondent that he responded to correspondence in a timely manner. The Tribunal notes that the respondent failed to answer the letter of 13 December which was taken as consent to judgment passing against it. The respondent thereafter received standard communications which were not appropriate to it being limited in its participation. The Tribunal is unaware when the case became amended to one of health and safety which potentially carries

serious implications for the respondent. The respondent said he had HR advice available to him. Plainly he did not seek it. The respondent should have indicated it was defending the claim at an early stage. It did not do so and was in no position to do so by the time of the hearing. Its participation in the hearing would have been limited but the respondent joined the hearing too late even for that limited participation.

12. This Tribunal is bound to follow the procedural stages determined by previous employment judges and considers that there are no grounds for reconsideration of its own judgment under rule 71 except to correct the error in the name of the respondent which was typographical.

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I D Truscott KC Employment Judge

Date: 20 October 2023