



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bridger

Respondent: G. L. Mears and Sons (A Partnership)

RECONSIDERATION JUDGMENT

The application for reconsideration is refused.

REASONS

1. The Respondent has applied for a reconsideration of the Judgment given orally on the 9 January 2024, which was then sent to the parties on 19 January 2024, and then written reasons sent to the parties on 5 February 2024, following a request for those by the Claimant on the 19 January 2024.
2. The grounds are set out in an email on behalf of the Respondent dated 6 February 2024.
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 Respondent's application has therefore been made within the relevant time limit.
4. 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.
5. Pursuant to Rule 72(1) if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked that application shall be refused and the parties informed of that refusal.
6. I consider that there is no reasonable prospect of the original decision being

varied or revoked so refuse the application.

7. The Respondent asserts that the Judgment finds that the ... “Transferee controlled the date of the transfer [para 90] contrary to the assertion that there is no reason why the transfer could not be delayed [para 94].”.
8. Paragraph 90 and 94 of the Judgment do not say what the Respondent asserts. It says (paragraph 90) ... “The Respondent is always aware that the new owners of BBS brand may consider taking the service “in house”. This is a live possibility from on or around the 26 May 2022 when Lawsons becomes the client and communicated to the Claimant on the 31 May 2022. There is not a “TUPE” view of matters expressed at that time by anybody”. Then (paragraph 94) ... “There is no reason given why the transfer could not be delayed allowing consultation on those matters if needed.”.
9. Then at paragraphs 91 and 92 of the Judgment ... “There being a TUPE transfer is asserted by the Respondent to Lawsons by email on the 21 July 2022.”. ... “There being a TUPE transfer is not initially agreed by Lawsons, but it is on the 28 July 2022.”.
10. The Respondent now asserts there is evidence of special circumstances that made it not reasonably practicable for information to be given or consultation to take place, and that the Respondent had done the best they could to comply in the circumstances. Reference is also now made by the Respondent to **Unison v Somerset Council 2009 WL 4872766** as an example of a special circumstances defence where the rapid sequence of events and imminent deadline were special circumstances making it not reasonably practicable to consult.
11. However, the facts found in this case, as repeated above from the Judgment, find that the Respondent from the end of May 2022 was aware that the new owners of BBS brand may consider taking the service “in house”. The Respondent on the 21 July 2022 asserts there being a TUPE transfer. The Transferee then agrees. Therefore, there is no reasonable prospect of the original decision being varied or revoked as the Respondent is seeking to rely upon a factual structure that was not found.

Employment Judge Gray
Date: 7 February 2024

Judgment sent to the Parties: 16 February 2024

FOR THE TRIBUNAL OFFICE