



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr L A Edwards

AND

**Respondent**

Severn Trent Water Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON

14 February 2024

EMPLOYMENT JUDGE N J Roper

### JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that 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 with reserved reasons dated 4 January 2024 which was sent to the parties on 22 January 2024 ("the Judgment"). The grounds are set out in his undated letter which was received at the tribunal office by email on 2 February 2024.
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 within the relevant time limit.
3. 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.

4. The grounds relied upon by the claimant in short are these: (i) the fact that there was an internal appeal was not taken into account; (ii) the probability of success of the claim was not taken into account; (iii) the fact that the claimant had no legal representation was not taken into account; (iv) there was good reason to exercise discretion and the emphasis should have been on whether the delay had affected the tribunal's ability to conduct a fair hearing; (v) the claimant was suffering from mental health issues; and (vi) the respondent failed to provide sufficient information for the claimant notified to the respondent.
5. Judicial discretion as to reconsideration should be exercised having regard to the interests of both parties and the public interest in finality in litigation (Outasight VB Ltd v Brown UKEAT/0253/14/LA).
6. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls 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".
7. More recent case law suggests that the "interests of justice" ground 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). This requires the tribunal to give effect to the overriding objective to deal with cases 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 confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.
8. In Ebury Partners UK Ltd v Davis EAT [2023] the EAT held that while it may be appropriate to reconsider a decision where there has been some procedural mishap, the jurisdiction should not be invoked to correct a supposed error made by the tribunal after the parties have had a fair opportunity to present their case on the relevant issue. This is particularly the case where the error alleges one of law, which is more appropriately corrected by the EAT.

9. In this case I am satisfied that the claimant had every opportunity to present his case on the relevant issues and the matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision.
10. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge N J Roper  
Dated 14 February 2024

Judgment sent to Parties on

23<sup>rd</sup> February 2024