



EMPLOYMENT TRIBUNALS

Claimant: Ms J Mellish
Respondents: Jim Rolf Ltd
Heard at: Bristol (decision on papers in Chambers)
Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The respondent's application for reconsideration is refused because there is no reasonable prospect of the respondent demonstrating that it is in the interests of justice for the Judgment to be varied or revoked.

REASONS

The application

1. On **8 April 2024** the respondent applied for reconsideration of the Judgment dated **13 March 2024** which was sent to the parties on 26 March 2022 ("the Judgment"). The grounds of the application are contained to an email of the same date.
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.

Grounds of the application

3. The permissible grounds for reconsideration are only those set out in Rule 70, namely that it is in the interests of justice to vary or revoke the Judgment.
4. The respondent's grounds for reconsideration appear to be that Mr Jaffari was not the claimant's employer, but rather was an employee, and that a Mr Mohamed Ali Jaffari was both his and the claimant's employer. He attached a letter, which was unsigned, from Mr Rolf, the former owner of the business purportedly confirming that he sold the business to that gentleman, and not the claimant.
5. That was not an argument raised before me in the pleadings or in evidence. The respondent has been identified as "Jim Rolf Limited" since 18 October 2023. Mr Jaffari, who completed the ET3, did not object to that course. I suspect the application for reconsideration arises because I have referred to him as the 'owner' of the business in the Judgment preamble, where the representatives were identified.
6. In the ET3 form at box 6.1 Mr Jaffari confirmed that he paid the claimant and was her manager. I note that Mr Jaffari was registered as a Director of the Respondent on Companies House between 28 January 2024 and 25 June 2024; and Mr Mohamed Jaffari has been a Director since 16 August 2022.
7. The Judgment has been correctly entered against Jim Rolf Limited. It makes no difference whether Mr Reza Jaffari or Mr Mohamed Jaffari is the owner or director of that company. The relevance of Mr Reza Jaffari's role was only that it was his actions which the claimant alleged amounted to a breach of the implied term of mutual trust and confidence, entitling her to resign. There was no dispute that he was present in the shop and interacted with the claimant on the day in question.
8. This ground of the application therefore entreats me to reconsider and review my decision on matters of fact or arguments which we have previously determined – the correct identity of the employer and therefore the respondent.
9. 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 68/60 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”.

10. There was no denial of natural justice in this case; rather I considered the evidence and the respondent’s arguments that was put before me and determined that the claims against Jim Rolf Limited were well founded.
11. Accordingly, I dismiss the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the respondent demonstrating that it is in the interest of justice for the Judgment to be varied or revoked.

Employment Judge Midgley
Dated 2 July 2024

JUDGMENT SENT TO THE PARTIES ON
08 July 2024 By Mr J McCormick

FOR THE TRIBUNAL OFFICE