EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
Mr R Kellett	**AND**	**Knorr-Bremse**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 29 July 2024

EMPLOYMENT JUDGE J Bax

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 striking out his claim dated 20 May 2024 which was sent to the parties on 7 June 2024 ("the Judgment"). The grounds are set out in his e-mails dated 14 and 15 June 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 are these:

    a. ACAS was notified prior to the Tribunal claim;
    b. the Respondent failed to carry out any dialogue with ACAS;
    c. ACAS issued the certificate at the last possible moment;
    d. The claim to the Tribunal had to be made within the time limit.

5. 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".

6. 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.

7. In Outasight VB Ltd v Brown [2015] ICR D11, EAT, HHJ Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows the tribunal a broad discretion to determine whether reconsideration

of a judgment is appropriate in the circumstances. However, this discretion 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'*.

Consideration of the application

8. On 19 April 2024 the Claimant was sent a strike out warning on the basis that it did not appear that the Tribunal had jurisdiction to hear the claim. The warning set out the procedural history and referred to the decision in Pryce v Baxterstorey Ltd [2022] EAT 61. The Claimant was required to provide a response to the warning by 26 April 2024 and was told that if he did not respond the claim would be struck out. No response was received.

9. There is a jurisdictional requirement for a Claimant to have obtained an Early Conciliation Certificate before presenting the claim. The Claimant had not obtained a certificate before presenting his claim and the Respondent had also not informed ACAS of the dispute. The Claimant said in his application that he had notified ACAS and that he needed to present his claim within the time limit. The time limits were paused whilst early conciliation was ongoing and therefore there was no requirement for him to present his claim whilst early conciliation was ongoing. It is not relevant that the Respondent did not respond during early conciliation, the time limits having been paused whilst conciliation was ongoing.

10. The Claimant was issued with a strike out warning and this was not a situation in which the decision of the Court of Appeal's decision in Sainsbury's Supermarket's Limited v Clark [2023] EWCA Civ 386 applied.

11. The Claimant did not respond to the strike out warning and in his application did not provide any reason as to why he did not respond. The warning contained an automatic provision that the claim would be struck out if he did not respond.

12. 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.

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Employment Judge J Bax
Dated 29 July 2024

Judgment sent to Parties on
31 July 2024

Jade Lobb
For the Tribunal Office