EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr A Buono	v	**Capital Arches Group Limited**

JUDGMENT ON RECONSIDERATION APPLICATION

The claimant's application dated 16 July 2024 for a reconsideration of the judgment dated 5 July 2024 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. In a judgment dated 5 July 2024, the Employment Tribunal determined that the claims made by the claimant had no reasonable prospect of success.

2. In an email to the Tribunal dated 16 July 2024, the claimant seeks a reconsideration of the judgment on the basis of an application and new information which is referred to in the email. 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 fromthe 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 forreconsideration 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 decisionshall 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 theEmployment 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 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. 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".

7. The requirement to consider the interests of justice to both sides is neither new nor novel. By way of illustration, in **Redding v. EMI Leisure Ltd** UKEAT/262/81, the claimant argued that it was in the interests of justice to undertake a [reconsideration] because she had not understood the case against her and had failed to do herself justice when presenting her claim. When rejecting the claimant's appeal, the EAT observed that: '*When you boil down what is said on [the claimant's] behalf, it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, justice means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation.*'

8. 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:
   a. it is irrelevant whether a tribunal's alleged error is major or minor.
   b. what is relevant is whether or not a decision has been reached after a procedural mishap.
   c. 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.
   d. if a matter has been ventilated and properly argued, then any error of law falls to be corrected on appeal and not by review.

9. The claimant complains about the findings of the Tribunal and asserts errors of law. This is a matter for the Employment Appeal Tribunal to determine.

10. The Tribunal considered the application from which it seemed that a number of complaints were made about earlier stages in the Tribunal process. As far as this Tribunal was aware, the claimant was content to proceed with the hearing. The Tribunal permitted the claimant to provide oral evidence in circumstances where he had not complied with an order to provide written evidence and gave no explanation as to why not. The respondent had no objection to this approach. This is set out in paras 4 and 6 (sic) of the Preliminary section.

11. The claimant relies on new information and assertions but does not explainwhy they were not made available to the Tribunal. Facts were not "censored" as the claimant alleged. The hearing was conducted along normal principles.

12. Notwithstanding the lack of any understandable basis for reconsideration put forward by the claimant, the Tribunal reviewed its judgment. It refused to allow

the race discrimination amendments for the reasons set out. It made specific findings about whether there was a dismissal or not in relation to which it did not find the claimant credible. It narrated the evidence about the respondent's actions in May 2023 but understood the distinction between a continuing act and an act with continuing consequences, if it was relevant to do so. The Tribunal relied on the evidence of the claimant regarding time limits as set out in para 36. The Tribunal could identify no reason to reconsider its judgment.

13. The claimant's application for reconsideration of the judgment dated 5 July 2024 is refused because there is no reasonable prospect of the original decision of the Tribunal being varied or revoked.

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Employment Judge Truscott KC

Date 29 July 2024

Sent to the parties on:

9th August 2024

For the Tribunal:

P Wing