



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Kenneth Didioma

AND

Respondent

Hampshire County Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON

10 September 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 it was presented out of time, and in any event, 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 17 July 2024 which was sent to the parties on 19 August 2024 ("the Judgment"). The grounds are set out in his letter dated 6 September 2024. That letter was received at the tribunal office by email on 6 September 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 outside the relevant time limit which had already expired on 3 September 2024.
3. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
 4. The claimant has not made an application for an extension of time, nor has he given any reason why the application was late. It is therefore refused because it was submitted out of time.
 5. In any event I would have refused the application for the following reasons
 6. 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.
 7. The grounds relied upon by the claimant are in summary these: (i) there was a misapplication of the definition of disability under the Equality Act 2010; (ii) there was a failure to consider the likely future duration of the condition; and (iii) the subsequent decision to dismiss the claimant's claims for discrimination arising from disability and in respect of an alleged failure to make reasonable adjustments were based on a flawed interpretation of the law and a failure to consider the full range of evidence presented during the hearing.
 8. In my judgment these matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision.
 9. 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).
 10. 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".
 11. 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.
12. 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.
13. 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.

Employment Judge N J Roper
Dated 10 September 2024

Judgment sent to Parties on

17 September 2024

Jade Lobb