



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr B Chaves

AND

Respondent
Wind River UK Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 3 December 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 granting the Respondent an extension of time to file a response dated 13 November 2024 which was sent to the parties the same day ("the Judgment"). The grounds are set out in his applications dated 29 November 2024, which were received by the Tribunal the same day.
2. This has been a remote hearing on the papers.

3. 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 of the relevant time limit.
4. 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.
5. 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.
6. The grounds relied upon by the claimant are these:
 - a. There were clear reasons for opposing the application and the solicitor had claimed without evidence that the office was minimally attended.
 - b. He could not see his grounds of resistance were on the system and it was not clear the Judge saw them.
 - c. This placed him at an unfair advantage because he was not heard.
7. 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".
8. 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.
9. 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'*.
 10. The Claimant's opposition to the application was referred to the Judge at the same time as the application for an extension. The contents of the Claimant's opposition were taken into account when making the decision, as set out in the first paragraph of the decision.
 11. The matters raised were not such that, when balanced against the short delay and that the Respondent had an arguable defence to the claim, so as to mean that there was greater prejudice to the Claimant by granting the application than to the Respondent if it was refused. This was set out in the decision.
 12. The relevant matters were taken into account, including the Claimant's opposition to the application.
 13. 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.

Employment Judge J Bax
Dated 3 December 2024

Judgment sent to Parties on
09 December 2024 By Mr J McCormick

For the Tribunal Office