Case No. 6015422/2024

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs S L McLaren	AND	FearFree

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol **ON** **17 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 applied for a reconsideration of the Judgment striking out the claim of unfair dismissal dated 5 December 2024, which was sent to the parties on 10 December 2024 ("the Judgment"). The grounds are set out in her e-mail dated 15 December 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. The Judgment did not fully account for the interplay between the unfair dismissal claim and disability discrimination claim. The events leading to her dismissal were caused by the Respondent's discriminatory actions, which led her to resign and it was therefore constructive dismissal.
    b. It was submitted that case law says that where discrimination is central to a dismissal, the two year service rule does not apply. Relying on Nottinghamshire County Council v Meikle [2004] EWCA Civ 859, Archibald v Fife Council [2004] UKHL 32 and , London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493.
    c. Reliance on s. 39(2) of the Equality Act 2010.
    d. Reliance on the Respondent's duties under the Equality Act 2010.

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'*.

Conclusions

8. The Claimant has clearly linked her resignation to discriminatory conduct contrary to the Equality Act 2010. A claim of unfair dismissal pursuant to the Employment Rights Act 1996 can only be brought if a Claimant has two years' service or falls within one of the exceptions in s. 108 of that Act. A dismissal involving the Equality Act is not one of the exceptions, as stated in the Judgment dated 5 December 2024.

9. The Claimant was not assisted by the cases of Nottinghamshire County Council v Meikle [2004] EWCA Civ 859, Archibald v Fife Council [2004] UKHL 32 and , London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493. In those cases all of the claimants had more than 2 years' service and the qualifying period was not an issue decided in them.

10. The Claimant does not fall within an exception to the 2 year service requirement for a claim of unfair dismissal under the Employment Rights Act 1996.

11. The Claimant referred to a discriminatory dismissal under s. 39(2) of the Equality Act 2010. That section does not give the Tribunal jurisdiction to hear a constructive dismissal claim under the Employment Rights Act 1996, it does not usurp the requirements in s. 108 of that Act.

12. As stated in the Judgment, the striking out of the constructive unfair dismissal claim under the Employment Rights Act 1996 does not affect the Claimant's claim that there was a discriminatory dismissal under s. 39(2) of the Equality Act 2010. That claim is a cause of action which does not have a minimum service requirement.

13. Accordingly the application for reconsideration pursuant to Rule 72(1) was refused because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge J Bax
Dated 17 December 2024

Judgment sent to Parties on
08 January 2025 By Mr J McCormick