EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr P Bainbridge	AND	Ares Renewables Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol **ON** **15 May 2025**

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that there are reasonable prospects of success in the application for reconsideration being granted. in accordance with rule 70 the Respondent may file a response to the application.

ORDERS

1. The Respondent shall, on or before 30 May 2025, send to the Tribunal and Claimant any written response to the application for reconsideration.

2. Both parties shall, on or before 30 May 2025, provide any observation on the application being determined without a hearing.

REASONS

1. The claimant has applied for a reconsideration of the judgment dated 14 March 2025 refusing the application to amend, which was sent to the parties on 12 May 2025 ("the Judgment"). The grounds are set out in his e-mail dated 13 May 2025.

2. The Employment Tribunal Procedure rules 2024 set out the rules of procedure. Rule 69 provides in respect of an application for reconsideration under Rule 68 that ,

   " Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
   (a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
   (b) the date that the written reasons were sent, if these were sent separately.

3. The application was therefore received within the relevant time limit.

4. The grounds for reconsideration are only those set out in Rule 68, namely that it is necessary in the interests of justice to do so.

5. The grounds relied upon by the claimant are these, that the Judge had misunderstood the schedule of loss and who he was employed by in March 2023.

6. 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".

7. 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 3). 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.

8. 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'*.

9. The Judge had misunderstood what the Claimant had said in his schedule of loss and accepts that he was not asserting he was employed by Kingdom Energy System Limited before his employment transferred to the Respondent. The Claimant is asserting that the undertaking he worked for transferred to Kingdom Energy System Limited.

10. The original decision was based on an incorrect understanding and it is not possible to say that there is no reasonable prospect of it being varied or revoked.

11. The Respondent shall on or before 30 May 2025 make any representation as to the application.

12. Further both parties shall say on or before 30 May 2025 whether the application can be dealt with without a hearing.

13. The Judge's provisional view is that due to the misunderstanding of what the Claimant said, the original decision to refuse the application to add a Respondent should be revoked. The Claimant is asserting that the undertaking he worked for was transferred to the proposed respondent and in the circumstances it would appear that the application to amend should have been granted. This was on the basis that it would have been in the interests of justice to add Kingdom Energy System Limited as a

Respondent, on the proviso that its inclusion was without prejudice to any argument it may have in relation to time limits.

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Employment Judge J Bax
Dated 15 May 2025

Judgment sent to Parties on
16 May 2025 By Mr J McCormick

For the Tribunal Office