



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mrs J Higgins

AND

Respondent
(1) Serco Limited
(2) Sheelavati Maji

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 18 January 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 the judgment dated 10 August 2023, dismissing her equal pay claim upon its withdrawal by the Claimant, which was sent to the parties on 30 August 2023 ("the Judgment").
2. The grounds are set out in the e-mail dated 15 December 2023.

3. This has been a remote hearing on the papers.
4. 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 not received within the relevant time limit.
5. 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.
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 these:
 - a. She had removed the claim in error at the preliminary hearing on 10 August 2023. She had realised this after having taken advice from a barrister on 15 December 2023.
8. 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".
9. 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.
10. 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'*.
 11. Under rule 51 of the Tribunal rules, where a Claimant informs the Tribunal that a claim or part of it is withdrawn, that claim or part is brought to an end. Under rule 52, where a claim or part of it is withdrawn under rule 51 the Tribunal shall dismiss it, unless the Claimant has said at the time of withdrawal they wanted to reserve the right to bring such a claim or the Tribunal believes such a Judgment would not be in the interests of justice.
 12. In Khan v Heywood and Middleton Primary Care Trust [2007] ICR 24 it was held that the Tribunal has no power to set aside a notice of withdrawal of a claim.
 13. The Claimant withdrew her equal pay claim. Rules 51 and 52 took effect. In the circumstances the Tribunal is unable to resurrect the claim within the proceedings.
 14. 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 J Bax
Date: 18 January 2024

Judgment sent to Parties: 19 January 2024

For the Tribunal Office