



EMPLOYMENT TRIBUNALS

Claimants

- (1) Mr Eustaquio Barreto
- (2) Mrs Mary de Souza
- (3) Mr Micheal Demelo
- (4) Mr Neves Estibeiro
- (5) Mr Egan Fernandes
- (6) Mr Remedios J Fernandes
- (7) Mr Caetano T Pinto
- (8) Miss Anisia Pinto
- (9) Mrs Reancy A Vales

Respondents

- (1) Twenty-Four Seven Recruitment Services Ltd
 - (2) Tempay Ltd – In voluntary insolvency
 - (3) Wincanton Group Ltd
 - (4) DHL Services Ltd
- and

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimants' applications for reconsideration are refused because there is no reasonable prospect of the decisions being varied or revoked.

REASONS

1. The Claimants applied for reconsideration of the Judgment dated 3 January 2019 which was sent to the parties on 4 January 2019. The grounds were set out in their applications 10-17 February 2019.
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 applications were therefore received outside the relevant time limit.

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. The exercise of a judge's discretion under rule 5 has to be explained on a sound and reasoned basis
4. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell 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*". More recent case law has suggested that the test 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) in order to ensure that cases are dealt with 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 stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

Background

5. The claims in this case were issued in 2015 and they have travelled under the lead case of Mr Afonso (No. 1400846/2015). There are 83 claims in total, including the 9 dealt with within this Judgment; 12 are unrepresented, 50 are represented by Pattinson and Brewer and 21 are now (recently) represented by Tom Street & Co. All of these Claimants are represented by Tom Street & Co.

6. On 3 May 2018, the Tribunal wrote to these Claimants to ask them to make contact in order to clarify whether they intended to pursue their claims. None of the nine Claimants responded to that letter. A letter was written in similar terms on 13 December 2018 and still there was no response. Accordingly, by a Judgment dated 3 January 2019, which was sent to the parties on 4 January, the claims were struck out on the basis that they had not been actively pursued (rule 37 (1)(d)).
7. Following receipt of the Claimants' applications, the Respondents were invited to comment and the Tribunal received comments on 1 April from the First, Third and Fourth Respondents. Additional comments were also received on behalf of the Claimants from Tom Street & Co.

Mr E Barretto

8. The Claimant's application was dated 15 February 2019. He stated that he had not received a copy of the Judgment in the post but the document was sent to the Claimant at the address that the Tribunal had on file. Further, the letters of 3 May and 13 December 2018 were sent out in the same way. It is up to a party to appraise the Tribunal of any change of address or difference in contact details. As far as the Tribunal is aware, the Claimant had not made contact for over 7 months.
9. The Claimant indicated that he had received the Judgment of 3 January but he made no comment in respect of the previous letter of 3 May. He also provided no indication why his application for reconsideration was made outside the 14 day time limit.
10. Mr Street's email of 1 April indicated that the underlying reason for all of the Claimants' failure to comply with the Tribunal's requests was because they lost their original legal representatives and were faced with significant difficulties, not only because they did not understand the Tribunal process but also because English was not their first language.
11. The Claimant has communicated effectively in English and the Judge does not consider that the Tribunal's requests of 3 May and 13 December were in any way complicated or difficult to understand.
12. The Claimant's failure to maintain contact with the Tribunal and actively pursue his case has extended over many months and his application for reconsideration is refused. Although the Judge recognises that the letter of 13 December 2018 did not specifically warn the Claimant that the claim may have been struck out, that did not prevent the Tribunal from doing so in

accordance with rule 37; the Claimant had been given reasonable opportunity to make representations following the two letters which had been sent in 2018. The criticisms made at the end of the Third Respondent's email of 1 April 2019 are well founded.

Mrs de Souza

13. The Claimant's application was sent on 13 February 2019, again without explanation as to the delay. An updated address was provided and the obvious explanation for the Claimant's inaction was her failure to update the Tribunal of her change of address. The contents of paragraph 8 above are repeated in that respect.
14. Nothing otherwise sets this application apart from that of Mr Baretto's and it is dismissed for the same reasons.

Mr E Fernandes

15. The Claimant wrote to the Tribunal on 10 and 13 February. First, he wrote with a change of address and he then indicated that he wished to have the Judgment of 4 January reconsidered.
16. His position mirrored those considered above and the application for reconsideration is refused for the same reasons.

Mr RJ Fernandes

17. The Claimant's email of 16 February did not actually contain an application for reconsideration but, like so many of those considered within this Judgment, was treated as *if* one had been made.
18. His email contained no indication of any change of address, an explanation as to why he had not received the communications of 3 May, 13 December 2018 and 4 January 2019 and/or any explanation of the delay in relation to his application. For those reasons and those set out above, the application is also rejected.

Mr M Demelo

19. The Claimant emailed the tribunal on the 10th and 15th of February. He initially indicated that he was representing himself and, subsequently, he stated that he had not received the letter of 13 December because it "*might had gone to my old address*". The same problems arise here as mentioned above. It is the Claimant's responsibility to ensure that the Tribunal has up-to-date contact details. The claim was not actively pursued for a significant period of time and

there is no indication why an extension of time ought to be granted to enable the application to be considered out of time. It is dismissed.

Mr N Estibeiro

20. The Claimant also indicated that he moved address and, consequently, did not receive the correspondence of 13 December 2018 or 4 January 2019. It is clear that the Claimant only moved a few doors away from his previous address (from 21 to 49 Alfred Street) and his inability to collect mail from his old address has not been explained, nor has his failure to update the Tribunal of his contact details. The application is also dismissed.

Mr C Pinto

21. There is very little in Mr Pinto's emails of 10 and 17 February which would enable a Tribunal to extend time and/or begin to understand why he failed to take action in respect of the correspondence of 3 May, 13 December and/or 4 January. The application is also dismissed.

Miss A Pinto

22. The Claimant's email of 10 February 2019 made it clear that the Claimant did receive the Judgment of 4 January. Why she did not respond to it then was not clear. Her further email of 16 February 2019 indicated that she had changed addresses and, yet again, she failed to keep the Tribunal informed of that change nor has she given any reason why time should be extended for her application to be considered late. Her application is also dismissed.

Mrs A Vales

23. Again, this Claimant changed addresses and has failed to supply explanations for her failure to reply to earlier correspondence, keep the Tribunal appraised of the change and/or to explain why she ought to be provided with an extension of time. Her application is also dismissed.

Conclusion

24. Accordingly, these applications for reconsideration pursuant to rule 72 (1) are refused because there is no reasonable prospect of the Judgment being varied or revoked.
25. Although it is clearly unfortunate that the Claimants lost their legal representation and/or changed addresses, there are plenty of other claimants within this litigation who have not failed to take appropriate steps to keep the Tribunal appraised of the situation and whose claims have not been struck out as a result.

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26. It may be said that the Respondents would not be prejudiced were the claims allowed to proceed because they are facing so many other like claims but it is not in the interests of justice for them to have to deal with claims which had not been prosecuted appropriately and for the Tribunal to allocate its limited resources to litigants who are unable to act diligently in pursuing them. Since no reasons for extensions of time have been provided in any event, the claims are dismissed.

Employment Judge Livesey

Dated 9 April 2019

Judgment sent to Parties on

11 April 2019

For the Tribunal Office