



# EMPLOYMENT TRIBUNALS

**Claimant:** Dario Afonso and Others

**Respondent:** (1) Twenty-Four Seven Recruitment Services Limited  
(2) Tempay Limited  
(3) Wincanton Holdings Limited  
(4) Wincanton Group Limited  
(5) Wincanton Plc  
(6) DHL Management Services Limited

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the first and third respondents' applications for reconsideration are granted. The reserved judgment dated 11 July 2017 is confirmed but the reasons for the judgment have been varied to take account of the matters raised in the reconsideration applications.

## REASONS

1. The first and third respondents applied for a reconsideration of the reserved judgment dated 11 July 2017 which was sent to the parties on 21 July 2017 ("the Judgment"). The grounds are set out in the third respondent's letter dated 4 August 2017 and received at the Tribunal office on the same date, and the first respondent's letter dated 7 August 2017 received at the tribunal office on the same date.
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 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 third respondent are that contrary to the finding in the judgment reasons that no completed assignment sheets for named employees were included in the bundle, completed assignment sheets for Joaquim Mendonca and Cosme Alves were included in the bundle. It was submitted that this might affect my conclusions on compliance by The Best Connection regarding remuneration, location and nature of work (Regulation 10(1)(a)(i),(ii) and (iii)) Agency Workers Regulations). It was submitted that a reconsideration to consider a variation of the judgment reasons in the light those documents would be in the interests of justice.
5. The grounds relied on by the first respondent are that pay scale documentation provided by Tempay for one of the claimants, Ms Sacrafamilia Desousa was included in the bundle and might affect my conclusions on compliance by Tempay regarding remuneration (Regulation 10(1)(a)(i) Agency Workers Regulations). The first respondent also supported the third respondent's reconsideration application.
6. The matters raised by the respondents were considered in the light of all of the evidence presented to the tribunal before it reached its decision. 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. I was satisfied that the documents to which I was referred in the reconsideration applications were not considered by me in reaching my conclusions. Although they were referred to in the third respondent's skeleton argument they had not been specifically drawn to my attention in oral submissions.
7. I considered the comments of the claimant on the respondents' applications and took into account the observations made. I noted that the claimant objected to the application of the first respondent as the documents referred to had not been referred to in the hearing or in submissions.
8. I concluded that the documents referred to by both the respondents were of relevance to the issues I had determined and that pursuant to Rule 72(1) it was in the interests of justice that I reconsider my conclusions in the light of that evidence.

9. Although the reconsideration has not resulted in a variation or revocation of the outcome of the hearing or the overall judgment, it has resulted in a variation of the reasons that support that judgment. The paragraphs containing the varied reasons are as follows: 29, 30, 31, 42 – 45, 61, 62, 63, 65, 66, 67, 72, 75, 76, 78, 79, 80, 85, 86, 87, 88, 92, 102 – 105.
10. The judgment is therefore confirmed but the reasons have been varied on reconsideration. It should also be noted that some additional amendments addressing typographical errors and need for clarification, which do not affect the conclusions, have been made. The document attached is the confirmed judgment with the varied reasons and should stand in substitution for the judgment and reasons sent out on the 21 July 2017

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Employment Judge  
Dated

JUDGMENT SENT TO THE PARTIES ON

14 September 2017

FOR THE TRIBUNAL OFFICE

	<b>Case no.</b>	<b>Claimant</b>
1.	1400846/2015	Mr D Afonso
2.	1400847/2015	Mr A Afonso
3.	1400848/2015	Mr PA Afonso
4.	1400849/2015	Miss AA Afonso
5.	1400850/2015	Mrs C Afonso

6.	1400851/2015	Mr E Aguiar
7.	1400854/2015	Mr S Almeida
8.	1400857/2015	Mrs MR Almeida
9.	1400858/2015	Miss VA Alvares
10.	1400859/2015	Mr C Alves
11.	1400860/2015	Mr A Volvociar
12.	1400861/2015	Mr JD Araujo
13.	1400862/2015	Mr P Barreto
14.	1400863/2015	Mr E Barreto
15.	1400866/2015	Mrs JE Cabral
16.	1400868/2015	Mrs P Cardoso
17.	1400870/2015	Mrs BS Cardozo
18.	1400871/2015	Mr JI Cardozo
19.	1400872/2015	Mrs R Carvalho
20.	1400874/2015	Mrs D Carvalho
21.	1400875/2015	Mr PS Carvalho
22.	1400876/2015	Mr AM Cavalho
23.	1400877/2015	Mr FD Chan
24.	1400878/2015	Mrs S Clement
25.	1400879/2015	Mr S Colaco
26.	1400880/2015	Mrs A Correa
27.	1400881/2015	Mr F Cortez
28.	1400882/2015	Mr CM Cortez
29.	1400884/2015	Mr V Cunha
30.	1400886/2015	Mr M D Souza
31.	1400887/2015	Mr G D Souza
32.	1400888/2015	Mr OE D Souza
33.	1400891/2015	Mr JS D'Souza
34.	1400892/2015	Mr SF D'Souza
35.	1400894/2015	Mrs V Da Costa
36.	1400895/2015	Mr R Da Costa Maia
37.	1400896/2015	Mr J Da Cunha
38.	1400897/2015	Mr C Da Cunha
39.	1400899/2015	Mrs L Da Cunha
40.	1400900/2015	Mr EA Da Silva
41.	1400901/2015	Mrs C Dcosta
42.	1400903/2015	Mr CR de Melo
43.	1400904/2015	Mr P de Sa
44.	1400905/2015	Mr J de Sousa
45.	1400907/2015	Mr YF de Souza
46.	1400908/2015	Mrs M de Souza
47.	1400909/2015	Mrs A de Souza
48.	1400910/2015	Mrs F de Souza
49.	1400911/2015	Mr MC Demelo
50.	1400912/2015	Miss P Demelo
51.	1400913/2015	Mr S Demelo
52.	1400914/2015	Miss GP Desousa
53.	1400915/2015	Mr SP Desouza
54.	1400916/2015	Mrs PS Desouza

55.	1400917/2015	Mr JT Desouza
56.	1400918/2015	Mr RD Deulkar
57.	1400920/2015	Mr C Dias
58.	1400921/2015	Mr M Dias
59.	1400922/2015	Mr D Dias
60.	1400923/2015	Mr R Dias
61.	1400924/2015	Ms T Dias
62.	1400926/2015	Mr C Dias
63.	1400928/2015	Mrs J Dias
64.	1400930/2015	Mr P Dias
65.	1400931/2015	Mr F Dias
66.	1400932/2015	Mr DX Dias
67.	1400933/2015	Mrs D Dias
68.	1400934/2015	Mrs D Dias
69.	1400936/2015	Mrs S Dias
70.	1400937/2015	Mr V Dias E Fernandes
71.	1400938/2015	Mr J Dias Monteiro Cha
72.	1400940/2015	Mrs M Do Rego
73.	1400942/2015	Mr PA Estibeiro
74.	1400943/2015	Mr S Estibeiro
75.	1400944/2015	Mr M Estibeiro
76.	1400945/2015	Mr N Estibeiro
77.	1400946/2015	Mr J Fernandes
78.	1400947/2015	Mr P Fernandes
79.	1400948/2015	Mr A Fernandes
80.	1400949/2015	Mr RS Fernandes
81.	1400951/2015	Mr E Fernandes
82.	1400952/2015	Mrs H Fernandes
83.	1400955/2015	Mr S Fernandes
84.	1400956/2015	Mr C Fernandes
85.	1400957/2015	Mrs MA Fernandes
86.	1400958/2015	Mr J Fernandes
87.	1400959/2015	Mr CM Fernandes
88.	1400960/2015	Mrs V Fernandes
89.	1400961/2015	Miss M Fernandes
90.	1400962/2015	Mr PP Fernandes
91.	1400963/2015	Mr J Fernandes
92.	1400964/2015	Mr M Fernandes
93.	1400965/2015	Mr AM Fernandes
94.	1400966/2015	Mrs M Fernandes
95.	1400968/2015	Mr JM Fernandes
96.	1400969/2015	Mr J Fernandes
97.	1400971/2015	Mrs FG Fernandes
98.	1400972/2015	Mr RJ Fernandes
99.	1400973/2015	Mr CC Fernandes
100.	1400974/2015	Mr AA Fernandes
101.	1400975/2015	Mr VL Fernandes
102.	1400977/2015	Mrs M Fernandes
103.	1400980/2015	Mr JA Fernandes E Mendonca

104.	1400981/2015	Mr X Fernandes
105.	1400982/2015	Mr P Fondekar
106.	1400983/2015	Mr P Foto
107.	1400984/2015	Mr I Fox
108.	1400985/2015	Mrs L Furtado
109.	1400986/2015	Mrs ID Gabor
110.	1400987/2015	Mr D Gomes
111.	1400988/2015	Mr C Gonsalves
112.	1400989/2015	Mr S Gonsalves
113.	1400990/2015	Mr F Gonsalves
114.	1400991/2015	Miss M Gonsalves
115.	1400992/2015	Ms W Gonsalves
116.	1400993/2015	Mrs WM Gonsalves
117.	1400995/2015	Mr D Gracias
118.	1400996/2015	Mr F Gracias
119.	1400997/2015	Mrs T Gracias
120.	1400999/2015	Mrs F Gurjao
121.	1401000/2015	Mrs BK Gurung
122.	1401001/2015	Mrs R Gurung
123.	1401002/2015	Miss A Jedrzejewska
124.	1401003/2015	Miss MG Joseph
125.	1401004/2015	Miss M Kedzierska
126.	1401005/2015	Mrs I Kostanska
127.	1401006/2015	Mr J Law
128.	1401007/2015	Mr P Legace
129.	1401008/2015	Mr SG Lotliker
130.	1401009/2015	Miss S Maliszewska
131.	1401010/2015	Mr C Marques
132.	1401012/2015	Mr P Mascarenhas
133.	1401013/2015	Mr J Mascarenhas
134.	1401015/2015	Mrs S Menezes
135.	1401016/2015	Mr VP Miranda
136.	1401017/2015	Mr M Monteiro
137.	1401018/2015	Mr AA Naique
138.	1401019/2015	Miss D Naique
139.	1401020/2015	Mr BA Naique
140.	1401021/2015	Mr A Nunes
141.	1401022/2015	Mrs M Nunes
142.	1401024/2015	Mr J Pereira
143.	1401027/2015	Mr C Pereira
144.	1401029/2015	Mrs P Pereira
145.	1401030/2015	Mrs TZ Pereira
146.	1401032/2015	Mr PE Pereira
147.	1401033/2015	Miss A Pinto
148.	1401034/2015	Mr PA Pinto
149.	1401035/2015	Mr C Pinto
150.	1401038/2015	Mr A Pinto
151.	1401040/2015	Mrs L Pinto
152.	1401041/2015	Mr M Pinto

Case No. 1400846/2015 & 190 Others  
(See attached schedule)

153.	1401042/2015	Mrs D Pun
154.	1401043/2015	Mr C Quadros
155.	1401044/2015	Mrs P Rebello
156.	1401045/2015	Mr DM Rego
157.	1401046/2015	Mrs M Ribeiro
158.	1401047/2015	Mrs I Rodrigues
159.	1401048/2015	Mr N Rodrigues
160.	1401049/2015	Mr AB Rodrigues
161.	1401050/2015	Mr C Rodrigues
162.	1401051/2015	Mrs V Rodrigues
163.	1401052/2015	Mr A Rodrigues
164.	1401054/2015	Miss A Rodrigues
165.	1401055/2015	Miss TF Rodrigues
166.	1401056/2015	Mr NJ Rodrigues
167.	1401057/2015	Mr E Rodrigues
168.	1401058/2015	Mr J Rodrigues
169.	1401060/2015	Mrs SA Rodrigues
170.	1401062/2015	Mr J Rosario
171.	1401063/2015	Miss W Rosario
172.	1401064/2015	Mr J Rzepka
173.	1401065/2015	Mrs SM Silva
174.	1401066/2015	Mr CD Silveira
175.	1401068/2015	Mr R Siqueira
176.	1401069/2015	Mr S Soares
177.	1401070/2015	Miss S Souza
178.	1401071/2015	Miss D Stagg
179.	1401072/2015	Mr AA Travasso
180.	1401073/2015	Mrs HM Travasso
181.	1401074/2015	Mr M Vales
182.	1401075/2015	Mrs RA Vales
183.	1401076/2015	Mrs QV Vales
184.	1401077/2015	Mr A Vales
185.	1401078/2015	Mr PR Vas
186.	1401079/2015	Mr F Vas
187.	1401080/2015	Mrs P Vas
188.	1401081/2015	Mr E Vas
189.	1401082/2015	Mrs S Veluscar
190.	1401084/2015	Mr W Wysocki
191.	1401085/2015	Mr M Wysocki