



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Niba

**Respondent:** Platt and Hill Limited

## JUDGMENT

The application for a reconsideration of the judgment sent to the parties on 28 July 2017 is refused.

## REASONS

1. A letter was received by the tribunal on 28 July 2017 headed “Grievance and Notice of Claim for Judicial Review” in which the claimant, having made a variety of general observations, said this: “Finally the precedent that the Judge cited in striking out this claim is one that I wish to challenge; it is certainly antithetical to the Parliamentary Equality Act, and by showing that the Equality Act applies to the Judiciary as well I hope to defang (sic) the judgment.”
2. The claimant’s letter was referred to the Regional Employment Judge who directed that it be treated as an application for reconsideration and referred to me.
3. The Tribunal’s powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where “it is necessary in the interests of justice to do so.” Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
4. The approach to be taken to applications for reconsideration was set out in the recent case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA in the judgment of Simler P. The Tribunal is required to:
  - 4.1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable

prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;

4.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and

4.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.

5. In paragraph 34 and 35 of the judgment Simler P included the following:

“A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

6. In my view the only matter raised in the claimant’s letter that relates directly to my earlier judgment is the passage that I have quoted in paragraph 1 above. I have therefore focussed on that in deciding the application. I consider the other matters raised are outwith any application for reconsideration.

7. In accordance with the guidance set out above I next consider whether is anything in the passage that might properly lead me to vary or revoke the decision.

8. The application, is a challenge to the authority of the precedent to which I referred, **Madarassy v Nomura International Plc** [2007] IRLR 246, a decision of the Court of Appeal. Decisions of that Court are binding both on this Tribunal and the Employment Appeal Tribunal.

9. If such a challenge can properly be mounted, it cannot be done successfully before this Tribunal because of its binding effect. Moreover, if my judgment does contain an error of law, as the claimant implies, it “is to be corrected on appeal and not through the back door by way of a reconsideration application” as Simler J held in the case quoted above.

10. For that reason, I am bound to hold there is no reasonable prospect of the judgment being varied or revoked upon reconsideration. I refuse the application.

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Employment Judge T Ryan  
02 August 2017

JUDGMENT AND REASONS SENT TO THE  
PARTIES ON  
2 August 2017

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FOR THE TRIBUNAL OFFICE