



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Marsden

**Respondent:** Bucher Municipal Ltd

## JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the reserved judgment dated 26 May 2021 and sent to the parties on 8 June 2021 is refused. The Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

1. Following a preliminary hearing on 11 May 2021, the Tribunal prepared a reserved judgment with reasons on 26 May 2021, which was sent to the parties on 8 June 2021. The Tribunal held that it did not have territorial jurisdiction to determine the claim and accordingly the claim was dismissed.
2. By email of 11 June 2021 the claimant presented an application for reconsideration of the judgment. That application complies with the procedural requirements of rules 70 and 71 of the Employment Tribunals Rules of Procedure 2013.
3. Having considered the application under rule 72, the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked. The application is refused for the following reasons (by reference to the claimant's grounds for the application).
4. The Tribunal does not consider that it is necessary in the interests of justice to reconsider its decision. The issue before the Tribunal concerned its territorial jurisdiction to determine the claimant's substantive claim. It did so by reference to well-established principles of law and the relevant legal authorities in England and Wales. If the Tribunal committed any error in law in respect of applying those principles and authorities then the claimant's proper recourse is an appeal to the Employment Appeal Tribunal.

5. It is not necessary for every matter of evidence to be addressed or for every finding of fact to be set out in a judgment. Some matters of fact and evidence were either so obvious, or not in contest, that they did not need to be set out in the judgment.
6. The Tribunal fully understood that the various companies in the Bucher Group are separate legal entities, and are domiciled in and governed by different legal systems and jurisdictions. The Tribunal readily accepts that Bucher Municipal GmbH is part of the Bucher Group.
7. The Tribunal fully appreciated that the claimant had originally been recruited and employed by the respondent company (or its predecessor in title) under a contract of employment governed by English law and that he worked in Dorking, Surrey, UK. This is a relevant but not determinative factor in deciding whether the Tribunal had territorial jurisdiction in the circumstances of the claimant's later employment history.
8. The reference to the Operations Director for Bucher Municipal GmbH is apparently a reference to Mr David Bishop, who is referred to in the facts. The omission of a reference to his role for Bucher Municipal GmbH does not affect the determination of the territorial jurisdiction in relation to the claimant and his claim.
9. The Tribunal appreciated that the claimant's employment contract was exclusively with the respondent. At no time was there a legal contract with any other entity. The Tribunal did understand the HR and payroll arrangements. The claimant was simply employed by the respondent company and undertook work abroad for Bucher Group companies.
10. It does not matter why or how the claimant was paying Latvian taxation. The Tribunal need not and did not explore that further.
11. The same is true concerning the claimant's tax status in Germany and the UK.
12. The circumstances in which the claimant entered into a new contract of employment subject to German law were not put in issue. The fact is that the claimant entered into such a contract.
13. Paragraph 75 of the Tribunal's original reasons addresses rule 8 of its procedural rules. As the paragraph explains, rule 8 does not dispose of the question of territorial jurisdiction.
14. The question of which country's legal system, if any, has territorial jurisdiction over the claim must be answered by this Tribunal in accordance with the law of England and Wales. It cannot be decided in favour of affording this Tribunal territorial jurisdiction simply on the basis that the German Labour Court has declined jurisdiction, even if the result is that the claimant is left without a jurisdiction in which to pursue his claim.
15. The claimant had already cited to the Tribunal the Civil Jurisdiction and Judgments Act 1982; the recast EU Regulation 1215/2012; and EU Regulation 593/2008. These sources of the law only assist in deciding the first question

posed by the Tribunal in its original reasons, namely, the question of forum. It does not determine the applicable law (the second question) nor the third question (the one of which this Tribunal is seized) whether the territorial reach or scope of the Employment Rights Act and the Equality Act extends to the claimant's employment at the relevant time.

16. Although not strictly speaking "new evidence", the Tribunal has nevertheless now considered the appellate decision in the *Mrs L Lodge v Dignity and Choice in Dying and another* UKEAT/0252/14. In cases involving questions of territorial jurisdiction it is not generally helpful or appropriate to search for analogous cases on similar facts. They are at best illustrative rather than determinative or indicative. Each case must be decided on its particular facts. The case of *Lodge* is a usefully summary of the relevant legal principles (at least at the time it was decided), but it is by no means "on all fours" with the facts of Mr Marsden case. The Tribunal gleans little or no assistance from that case.
17. The claimant's reliance on the Charter of Fundamental Rights, the case of *Benkharbouche* and the Contracts (Applicable Law) Act 1990 again does not assist the Tribunal in answering the question of territorial jurisdiction. Those sources of law do not address the issues of the territorial scope or reach of the Employment Rights Act and the Equality Act as they might apply to the claimant and his particular employment circumstances.
18. The application for reconsideration is thus refused for these reasons. The original judgment is confirmed.

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Employment Judge Brian Doyle  
Date: 15 June 2021

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