



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Hider Hidery

**Respondent:** Johnsons Textile Services Ltd

## JUDGMENT

The claimant's application dated **8 July 2021** for reconsideration of the judgment sent to the parties on **25 June 2021** is refused because there is no reasonable prospect of the original decision being varied or revoked

## REASONS

### *Introduction*

1. The claimant presented 2 claims for unfair dismissal (and other relief) relating to his dismissal on 19 March 2020 the second claim being made following the outcome of his internal appeal against the dismissal.
2. I heard the claims by CVP on 18 and 19 March 2021, at which hearing the claimant represented by Mr Joh Neckles of the PTSC Union and the respondent was represented by Mr Dan Soanes of Sherrards Law.
3. Owing to the time taken to hear the evidence, there was no time to hear oral submissions and so both representatives provided these in writing. In the case of the claimant, the submissions ran to 36 pages.
4. I found the claimant's dismissal was fair and dismissed his claim for reasons given in a Reserved Judgment. The judgment was sent to the parties on 25 June 2021. The claimant applied for reconsideration of that decision on 7 July 2021 although this was not referred to me until 28 September 2021.

### *The applicable legal principles*

5. 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."

6. 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.
7. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
8. Under rule 71 an application for reconsideration must be made within 14 days of the date on which the judgment (or written reasons, if later) was sent to the parties. I accept that this application was clearly made in time.
9. The approach to be taken to applications for reconsideration was set out in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
  - a. 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;
  - b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead a tribunal to vary or revoke the decision; and
  - c. if this leads to the conclusion that there is nothing in the grounds advanced by the Claimant that could lead to the decision being varied or revoked, give reasons for that conclusion.

10. In paragraphs 34 and 35 of the judgment Simler P gave the following guidance:

“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.”

#### *Claimant's Grounds for Reconsideration*

11. There are 2 grounds set out in the claimant's representative's email of 8 July.

- 12. The first is *"That the Tribunal erred or misdirected in law, by finding / determining at paragraphs 73 – 74, that the effective date of dismissal remained the original date of dismissal, and not the effectual date of the appeal hearing which effectively represented the date upon which the lawful date of dismissal with notice, was decided upon and effected."*
- 13. The second is *"That the Employment Tribunal erred or misdirected in law in finding or determining that the Claimant's dismissal is/was fair"*.
- 14. It is clear from the terms of both grounds that they assert an error of law in the determination of the issues identified. In a later email, on 11 July 2021, the claimant's representative expanded on the legal submissions but did not depart from the stated grounds.
- 15. The claimant's submissions, from his experienced representative, fully ventilated the relevant points of law. I have reviewed the emails of 7 and 11 July 2021. Insofar as they might seek to advance new legal arguments, the claimant had every opportunity to advance these in the original submissions. Reviewing my judgment in the light of these emails, I have not detected any error of law in the original reasons.
- 16. As noted by Simler P, where a party considers there has been an error of law, the correct course is to appeal. Applications for reconsideration are not to be used as an attempt to appeal by the back door.
- 17. In my judgment there is nothing in the present application which demonstrates any obvious error which needs correction. I am satisfied there is no reasonable prospect of the original decision being varied or revoked on either ground. Accordingly, the application for a reconsideration is refused under rules 70 and 72.

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Employment Judge Hanning

22 October 2021

Date \_\_\_\_\_  
JUDGMENT SENT TO THE PARTIES ON

5 November 2021

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FOR THE TRIBUNAL OFFICE