



# EMPLOYMENT TRIBUNALS

Claimant

and

Respondent

Mr S McDonald

Asda Stores Limited

## JUDGMENT ON RECONSIDERATION

### Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the respondent's application, having read the claimant's comments, and without a hearing, the judgment sent to the parties on 3 January 2022 is varied as follows;

- 1 The amount of costs to be paid by the respondent to the claimant will now be £4569 legal costs (50% of £9138) plus VAT of £913.80 plus counsel's fees of £2500 plus VAT of £500, making the total sum payable - **£8482.80**
- 2 All other parts of the judgment are confirmed. It is not in the interests of judgment to reconsider other parts of the judgment and there is no reasonable prospect of those parts of the judgment being revoked or varied.

## REASONS

### Introduction and issues

- 1 This matter came before me at a preliminary hearing on 14 December 2021 and I reserved judgment on the costs application. My judgment was sent to the parties on 3 January 2022. The respondent applied for reconsideration of that judgment on 11 January 2022 but I am on extended leave and did not receive the application until 21 February 2022 at which point I invited comments from the claimant which arrived on 28 February 2022. I received short comments from the respondent in reply to the claimant's comments before I considered the application.

- 2 There are two main arguments put forward by the respondent in its application for reconsideration. First, I am asked to reconsider the decision to award 50% of the claimant's costs because, it is said, I made reference to work that was not wasted by the unreasonable conduct of the respondent. The respondent referred to paragraphs 16 and 17 in the judgment where I mention particular items in the claimant's schedule of costs. It suggests my finding of an award of 50% is not consistent with what I said about work which was not wasted.
- 3 The claimant does not accept that my finding is inconsistent and refers to what I said about assessing costs on the information available to me at 50%. The claimant objects to that part of the reconsideration application.
- 4 The second part of the reconsideration application refers to double counting of counsel's fees as it was included in the total legal fees and I then added it on again. This is accepted by the claimant and, when I checked, I see that I did make that error and apologise for it. It is accepted that needs to be re-calculated.
- 5 The parties agreed that the application could be considered on the papers and I agree that is a proper way to deal with this matter.

#### **The Rules on reconsideration**

- 6 Rules 70-72 are those that apply to reconsideration applications. Rule 70 sets out the principles and reads:

*"A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again".*

- 7 Rule 71 deals with the process for applications and reads:-

*"Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why the reconsideration of the original decision is necessary"*

- 8 Rule 72 explains the process, beginning with an initial consideration by the employment judge on whether to reject the application if it is considered there is no reasonable prospect of success. If it is not rejected, the application should be considered at a hearing unless the employment judge considers that a hearing is not necessary. Rule 72 provides that the reconsideration application should be considered by the employment judge or the full tribunal that made the original decision.

**Conclusions**

- 9 I deal first with the application to reconsider the decision to award 50% of the solicitor’s costs. I have read my judgment again and can see that I was assessing what would be a reasonable sum to award, having found unreasonable behaviour on the part of the respondent. It was clear to me that not all the costs should be awarded as some of the work carried out by the claimant’s solicitors would have had to be done in any event. I made reference to other work which would need amending. I assessed the work which was caused by the respondent’s unreasonable behaviour to be about 50%. I do not accept there was any inconsistency in what I said and there is no reasonable prospect of the judgment being varied on those grounds. It is not in the interest of justice to reconsider that part of the judgment.
- 10 However, as indicated, I did make a calculation error and I therefore reconsider that part of the judgment. For some reason, I also omitted to add VAT onto counsel’s fees and that should also be varied. The figures are as stated by the claimant’s solicitors and accepted by the respondent and are set out above. The total sum awarded as costs is now £8482.80 rather than ££9302.80.

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**Employment Judge Manley**  
**7 March 2022**

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**Judgment sent to the parties on**

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**For Secretary of the Tribunals**