EMPLOYMENT TRIBUNALS

Claimants:

Mr S Connaughton	(Third Claimant)	(3314482/2019)
Mr T Deacon	(Fourth Claimant)	(3314483/2019)
Mr J Sherwood	(Tenth Claimant)	(3314489/2019)

Respondents:

Monarch Aircraft Engineering Limited (In administration)	(First Respondent)
Morson Projects Limited	(Second Respondent)

JUDGMENT

The Claimants' application dated **31 March 2022** for reconsideration of the judgment given orally to the parties on 23 February 2022 sent to the parties **on 8 March 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

> **70. Principles**
> 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.
>
> **71. Application**
> 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 reconsideration of the original decision is necessary.
>
> **72. Process**
> (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked(including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1), requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. Under the current version of the rules, there is a single ground for reconsideration: "*where it is necessary in the interests of justice*". When deciding that question, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

5. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Although the other specific grounds set out in the earlier versions of the rules had not been duplicated, an application relying on any of those arguments can still be made in reliance on the "interests of justice" grounds.

6. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment

7. I take account of what is stated in Mr Deacon's email of 31 March 2022 (with attachments) and treat it as being an application for reconsideration on behalf of all 3 claimants. A request for written reasons was received on 26 February 2022, and therefore the reconsideration application is in time.

8. The points made can be summarised as follows (some of the arguments overlap, but I do not regard them as contradicting each other):

   8.1. That only the pre-transfer employer, Monarch Aircraft Engineering Limited, could perform the obligations set out in Regulation 13(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") in relation to these claimants
   8.2. That any purported inform/consult exercise carried out by Morson Projects Limited was irrelevant in relation to these claimants (for various reasons, including that that is not what the legislation and case law requires/permits, and that Morson was, in any event, not in possession of sufficient facts and information to carry out the exercise and, further, that Morson was not in a position to agree – or disagree – with any proposals made on behalf of Monarch's staff, at the relevant times).
   8.3. That any purported inform/consult exercise failed to comply with the minimum requirements, an argument which includes (but not limited to) that the NDAs which the participants were required to sign prevented the exercise fulfilling the requirements of the legislation
   8.4. That Morson Projects Limited would not necessarily have been identified as the (purported) transferee for (some or all of) the claimants had the transferor correctly complied with its duties to inform/consult and, in any event, Morson was not the appropriate organisation to decide which organised grouping the employees belonged to and/or to which entity (if any) they should transfer
   8.5. That Morson had acted as if it was recruiting or selecting staff, rather than regarding itself as receiving employees automatically because of TUPE
   8.6. That the claimants had not waived or signed away any right to be informed or consulted (and nor could they have done so, even if they had wanted to, which they did not)
   8.7. Had there been a hearing with evidence, then that evidence would have supported the claimants case that there was no (adequate) inform/consult exercise, and, in any event, the claims should not have been struck out without the opportunity for the evidence to be presented and considered

9. However, I do not need to comment on these arguments individually, because the answer to all of them is the same: none of these arguments address the reasons that the claims were struck out.

10. When I struck out the claims, I did not decide
   10.1. That the complaint brought by Unite the Union, as per Regulation 15(1)(c) of TUPE would have had no reasonable prospects of success had it not been withdrawn by Unite the Union
   10.2. That a hypothetical complaint brought by any or all of these 3 claimants (Connaughton, Deacon, Sherwood) under Regulation 15(1)(a) or (d) of TUPE had no reasonable prospects of success had such a complaint been presented

11. For the reasons explained more fully in the written reasons, the decision was that
   11.1. All of the claimants (including these 3, but not only these 3) had confirmed that complaint had been brought (only) under Regulation 15(1)(c) and
   11.2. I did not grant permission to amend and

11.3. these claimants had no reasonable prospects of success for a complaint presented under Regulation 15(1)(c) and
11.4. I exercised my discretion to strike out.

12. There is no reasonable prospect of my varying my decisions either in relation to strike out or in relation to costs.

Employment Judge Quill

Date: 25 April 2022

REASONS SENT TO THE PARTIES ON

27 April 2022

FOR THE TRIBUNAL OFFICE

EMPLOYMENT TRIBUNALS

Claimants:

Mr S Connaughton	(Third Claimant)	(3314482/2019)
Mr T Deacon	(Fourth Claimant)	(3314483/2019)
Mr J Sherwood	(Tenth Claimant)	(3314489/2019)

Respondents:

Monarch Aircraft Engineering Limited (In administration)	(First Respondent)
Morson Projects Limited	(Second Respondent)

JUDGMENT

The Claimants' application dated **31 March 2022** for reconsideration of the judgment given orally to the parties on 23 February 2022 sent to the parties **on 8 March 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

> **70. Principles**
> 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.
>
> **71. Application**
> 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 reconsideration of the original decision is necessary.
>
> **72. Process**
> (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked(including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1), requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. Under the current version of the rules, there is a single ground for reconsideration: "*where it is necessary in the interests of justice*". When deciding that question, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

5. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Although the other specific grounds set out in the earlier versions of the rules had not been duplicated, an application relying on any of those arguments can still be made in reliance on the "interests of justice" grounds.

6. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment

7. I take account of what is stated in Mr Deacon's email of 31 March 2022 (with attachments) and treat it as being an application for reconsideration on behalf of all 3 claimants. A request for written reasons was received on 26 February 2022, and therefore the reconsideration application is in time.

8. The points made can be summarised as follows (some of the arguments overlap, but I do not regard them as contradicting each other):

   8.1. That only the pre-transfer employer, Monarch Aircraft Engineering Limited, could perform the obligations set out in Regulation 13(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") in relation to these claimants
   8.2. That any purported inform/consult exercise carried out by Morson Projects Limited was irrelevant in relation to these claimants (for various reasons, including that that is not what the legislation and case law requires/permits, and that Morson was, in any event, not in possession of sufficient facts and information to carry out the exercise and, further, that Morson was not in a position to agree – or disagree – with any proposals made on behalf of Monarch's staff, at the relevant times).
   8.3. That any purported inform/consult exercise failed to comply with the minimum requirements, an argument which includes (but not limited to) that the NDAs which the participants were required to sign prevented the exercise fulfilling the requirements of the legislation
   8.4. That Morson Projects Limited would not necessarily have been identified as the (purported) transferee for (some or all of) the claimants had the transferor correctly complied with its duties to inform/consult and, in any event, Morson was not the appropriate organisation to decide which organised grouping the employees belonged to and/or to which entity (if any) they should transfer
   8.5. That Morson had acted as if it was recruiting or selecting staff, rather than regarding itself as receiving employees automatically because of TUPE
   8.6. That the claimants had not waived or signed away any right to be informed or consulted (and nor could they have done so, even if they had wanted to, which they did not)
   8.7. Had there been a hearing with evidence, then that evidence would have supported the claimants case that there was no (adequate) inform/consult exercise, and, in any event, the claims should not have been struck out without the opportunity for the evidence to be presented and considered

9. However, I do not need to comment on these arguments individually, because the answer to all of them is the same: none of these arguments address the reasons that the claims were struck out.

10. When I struck out the claims, I did not decide
   10.1. That the complaint brought by Unite the Union, as per Regulation 15(1)(c) of TUPE would have had no reasonable prospects of success had it not been withdrawn by Unite the Union
   10.2. That a hypothetical complaint brought by any or all of these 3 claimants (Connaughton, Deacon, Sherwood) under Regulation 15(1)(a) or (d) of TUPE had no reasonable prospects of success had such a complaint been presented

11. For the reasons explained more fully in the written reasons, the decision was that
   11.1. All of the claimants (including these 3, but not only these 3) had confirmed that complaint had been brought (only) under Regulation 15(1)(c) and
   11.2. I did not grant permission to amend and

11.3. these claimants had no reasonable prospects of success for a complaint presented under Regulation 15(1)(c) and
11.4. I exercised my discretion to strike out.

12. There is no reasonable prospect of my varying my decisions either in relation to strike out or in relation to costs.

Employment Judge Quill

Date: 25 April 2022

REASONS SENT TO THE PARTIES ON

27 April 2022

FOR THE TRIBUNAL OFFICE