



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ogden

Respondent: Bristol Street Fourth Investments Limited

RECONSIDERATION JUDGMENT

The claimant's application dated 1 March 2022 for reconsideration of the judgment dated 16 February 2022 (and sent to the parties on 17 February 2022), is refused.

REASONS

1. In judgment dated 16 February 2022, I granted the respondent's application for a costs order against the claimant in the sum of £3,488.80
2. By an email dated 1 March 2022, the claimant seeks reconsideration of the Tribunal's Judgment. He contends that the judgment is discriminatory against '*any employee who disagrees with the decision of an employer*' and punitive in effect against '*people who are already financially hurt by the [employer's] decision*'.
3. On 29 March 2022, the claimant sent a further email to the Tribunal – but did not copy in the respondent – attaching a claim form that purports to be an appeal against the judgment. It contains various assertions which are addressed more fully below.
4. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides a statutory mechanism in accordance with which a judgment may be revisited. A judgment

may be reconsidered where it is necessary in the interests of justice to do so; rule 72(1).

5. The discretion to act in the interests of justice is not open ended; it must be exercised with regard to the interests of both parties and to the public interest requirement that there should, as far as possible, be finality in litigation, which militates against the discretion being exercised too readily: *Flint v Eastern Electricity Board* [1975] ICR 395, *Ministry of Justice v Burton and another* [2016] EWCA Civ 14.
6. In common with all powers under the 2013 Rules of Procedure, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective at rule 2, namely dealing with cases fairly and justly. Achieving finality in litigation is part of a fair and just adjudication.
7. It is a mandatory requirement pursuant to rule 72(1) for a Judge to determine whether there are reasonable prospects of a judgment being varied or revoked before seeking the other party's response: *TW White & Sons Ltd v White* UKEAT/0022/21.
8. Although I see that the respondent's representative has emailed the Tribunal, copying in the claimant, on 8 March 2022, objecting to the application for reconsideration, I have not taken into account the contents of that email when considering the application under rule 72(1): *White*
9. Turning first to the claimant's application of 1 March 2022, it amounts to little more than a bare assertion that he does not agree with the conclusion:
 - 9.1. There is no challenge to the findings that the threshold tests were met i.e. that the claim had no reasonable prospects of success, or that the claimant's conduct was unreasonable;
 - 9.2. Save for a bare assertion, there is no basis of a challenge to the decision to exercise my discretion to make an award of costs;

9.3. There is no challenge to the amount of costs awarded and insofar as the claimant suggests the effect of the award was punitive, that was explicitly dealt with in the judgment (paras 32 and 49).

10. Insofar as it was the claimant's intention on 4 April 2022 to submit to the Tribunal further information to support his application for reconsideration, that supplementary information does not assist the claimant:

10.1. On his own account, the claimant had been advised by ACAS of the possibility of an adverse costs order;

10.2. Contrary to his assertion, the claimant knew before he presented his claim that he had no legal basis to challenge the wages he had received, he admitted as much during the grievance process and whilst he was accompanied by a trade union representative (para 11 of the findings of fact) and that, furthermore, he had been advised that there was a risk of an adverse costs order in some cases;

10.3. I had, in fact, explicitly attached some weight to the claimant's earlier, implicit, assertion that his recent assessment of ADHD and ASD had some effect on his perception of right and wrong (para 48). His new assertion that his autism caused him to proceed and that he would *'have probably dropped the case as [he has] since discovered there was no legal case'* is (a) a bare assertion and a significant development of his earlier submissions and (b) factually incorrect – see para 10.2 above;

10.4. The claimant's conviction that he had a 'strong moral case' is not only a repetition of his earlier submissions it also fails to recognise that his belief is entirely subjective – not only had he been paid in accordance with his contractual requirements on his return to work in July 2020, he had been paid in excess of what his employer had been required to pay him under the Coronavirus Job Retention Scheme in respect of previous months and, furthermore, though complaining that he was at a disadvantage by not returning to work in June 2020, he fails to recognise that those colleagues who did, in fact worked to receive their wages that month, when the claimant did not;

10.5. As to the contention that the claimant now has a baby to care for and has no way of affording the costs award, those assertions do not, in my view alter matters. Changes to personal circumstances are an inevitable feature of life and that he does not contend that he has been forced into bankruptcy suggests that his earlier assessment of his finances was unduly pessimistic. The claimant does not suggest he has left employment or that his income has altered at all. His bare assertion that he cannot afford to pay the costs order made against him amounts to a repetition of his earlier submissions. That the Tribunal is not confined to making orders which a party is able to pay the moment the order is made was addressed in the judgment (paras 34, 52, 53). There is insufficient basis for concluding that my discretion should be exercised in a way that would undermine the principle of finality: *Flint, Burton*.

11. For the reasons set out above, I considered there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application.

EMPLOYMENT JUDGE JERAM

**REASONS SIGNED BY EMPLOYMENT
JUDGE ON 7 APRIL 2022**