



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Smith

**Respondent:** Derby and Derbyshire Local Medical Committee

## JUDGMENT

1. The respondent's application dated 30 March 2022 for reconsideration of the judgment sent to the parties on 16 March 2022 is refused.
2. The claimant's application dated 30 March 2022 for reconsideration of the judgment sent to the parties on 16 March 2022 is refused.

## REASONS

1. In a judgment sent to the parties on 16 March 2022 following a hearing on 25 February 2022 the claimant's claim for wrongful dismissal was dismissed, and his claim for unlawful deduction from wages was upheld. The respondent was ordered to pay the sum of £4,622.70 to the claimant.
2. On 30 March 2022 the respondent applied for a reconsideration of the part of the judgment relating to the unlawful deduction from wages. The respondent says, in summary, that the claimant failed to make reference to or give credit for an overtime payment that he had received and that it would therefore be in the interests of justice to reconsider the judgment to take account of the overtime payment.
3. The claimant also applied on 30 March 2022 for a reconsideration of the judgment dismissing his wrongful dismissal claim. He provided further details of his application for reconsideration on 4 April 2022. The claimant bases his application on case law that he referred to at the hearing on 25 February 2022. The claimant also responded to the respondent's application for reconsideration, stating that the overtime payment related to work carried out for the General Practitioners Alliance, and not for the respondent, so should not be taken into account.

4. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“**the Rules**”) provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original judgment may be confirmed, varied or revoked.
5. Rule 71 provides that applications for reconsideration shall be made either in the hearing itself or, in writing, within 14 days of the date on which the judgment is sent to the parties. Rule 72 contains the process that must be followed when an application for reconsideration is made. The first stage is for the Employment Judge to consider the application and decide whether there are reasonable prospects of the judgment being varied or revoked. If the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked, then the application shall be refused.
6. If the application is not refused at the first stage, there may be a reconsideration hearing and the parties will be asked for their views on whether the application can be determined without a hearing. The other party will also be given the opportunity to comment on the application for reconsideration.
7. When dealing with applications for reconsideration, the Employment Judge should take into account the following principles laid down by the higher courts:
  - a. There is an underlying public policy interest in the finality of litigation, and reconsiderations should therefore be the exception to the general rule that Employment Tribunal decisions should not be reopened and relitigated;
  - b. The reconsideration process is not designed to give a disappointed party a ‘second bite at the cherry’. It is “*not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before*” (Lord McDonald in **Stevenson v Golden Wonder Ltd 1977 IRLR 474**);
  - c. The Tribunal must seek to give effect to the overriding objective of dealing with cases fairly and justly, which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense;
  - d. The Tribunal must be guided by the common law principles of natural justice and fairness;
  - e. The Tribunal’s broad discretion to decide whether reconsideration of a judgment is appropriate must be exercised judicially “*which means 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*” (Her Honour Judge Eady QC in **Outsight VB Ltd v Brown 2015 ICR D11**);
  - f. The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment;

**Respondent’s application for reconsideration**

8. The respondent asks the Tribunal to reconsider its judgment to take account of evidence which it says was included in the bundle of documents prepared for

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the final hearing, but which was not referred to. The claimant has, in his email dated 4 April 2022, provided an explanation as to why the overtime payment referred to by the respondent was not taken into account. In these circumstances, I am satisfied that it would not be in the interests to revoke or vary the judgment relating to the claim for unlawful deduction from wages.

Claimant's application for reconsideration

9. The claimant's application is, in essence, an attempt to reargue a point that has already been considered and decided at the final hearing of the claim. The case law mentioned by the claimant was referred to during that hearing and has been taken into account in reaching the decision. The claimant is therefore trying to have a second bite at the cherry. That is not the purpose of the reconsideration process.
10. For the above reasons I am satisfied that there are no reasonable prospects of the judgment being varied or revoked. Both applications for reconsideration are therefore refused.

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Employment Judge Ayre

Date: 27 April 2022