



# EMPLOYMENT TRIBUNALS

BETWEEN

**CLAIMANT**

v

**RESPONDENT**

Miss J Capaldi

Asda Stores Ltd

**Heard at:** London South  
Employment Tribunal

**On:** 31 May 2022

**Before:** Employment Judge Hyams-Parish

**Representation**

**For the Claimant:**

In Person

**For the Respondent:**

Mr Rozycki, Counsel.

# JUDGMENT ON RECONSIDERATION

UPON an application by the Claimant for reconsideration pursuant to Rule 70 of the Employment Tribunal Rules, the application is refused as there are no reasonable prospects of the judgment, sent to the parties on 13 June 2022, being varied or revoked.

## REASONS

### A. LEGAL PRINCIPLES

1. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that an Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.

2. Rule 71 states that 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.
3. Rule 72(1) states that 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.
4. Rule 72(2) states that if the application has not been refused under Rule 72(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 Rule 72(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.

## B. APPLICATION

5. In this case, an oral decision was given to the parties on the day of the hearing and a written judgment was sent to the parties on 13 June 2022.
6. On 1 June 2022 the claimant requested written reasons of my decision.
7. On the same day the claimant emailed the Employment Tribunal requesting a reconsideration of my decision, which said as follows [sic]:

*Please could you reconsider the decision I was not disputing the face of what I did it was the fact the on page 234 of the binder the manager Swipes where on the same week I committed the offence they broke the swipe in and out policy. For one whole week which is a far greater fraud to asda than the one day I swiped in mark Capaldi in itself theft of company time as it was for me I cannot see the difference between the to action/ offences and 3x managers committed the same rule of swipe in and out policy offence rules broken I was dismissed on I was singled out of the 3 managers and dismissed on the exact policy they broke for one whole week and not one day. The swiping in and out policy I broke was exactly the same policy they broke. I was single out as was mentioned in appeal hearing at Wallington on the 23 March 2020 page 295 the managers swipes was shown to them*

## C. CONCLUSIONS

8. I have decided to deal with this application now, notwithstanding that at the same time I am preparing written reasons. The written reasons will state the same reasons that the parties were given at the end of the hearing.
9. This application has no reasonable prospects of success. The argument that the claimant puts forward in her reconsideration application is no different than the one she put forward during the hearing. Indeed it was really the only complaint about the dismissal which she said was unfair. It was considered carefully before concluding that the unfair dismissal claim should fail for the reasons given during the hearing and which are confirmed in the written reasons.
10. I note also that the claimant is attempting to prove to me, after the event, that what happened to her was unfair. In so far as the test of unfair dismissal is concerned, I am required to look at the evidence that was before those that decided to dismiss the claimant and ask myself whether their decision to dismiss fell within a band of reasonable responses open to them.
11. For the above reasons, the application for reconsideration is refused.

**Employment Judge Hyams-Parish**  
**20 June 2022**

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