



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Jarosinski

**Respondent:** Nestle UK Ltd

## RECONSIDERATION JUDGMENT

1. The claimant's application dated 6 June 2022 for reconsideration of the judgment sent to the parties on 24 May 2022 fails. The original judgment of the Tribunal is confirmed.

## REASONS

1. In a judgment dated 22 December 2021 and sent to the parties on 5 January 2022, following a 9 day hearing from 15 to 25 November 2021 ("**the Original Judgment**"), the Tribunal dismissed the claimant's claims for wrongful dismissal, direct race discrimination, harassment and victimisation. The complaint of unfair dismissal was upheld, but the Tribunal found that the claimant contributed 100% to his dismissal and that, accordingly, no basic or compensatory awards should be made.
2. On 18 January 2022 the claimant applied for reconsideration of the judgment and for a costs order against the respondent. In an application running to 298 pages, the claimant asserted that there were errors in most of the 325 paragraphs of the judgment.
3. The claimant's applications for reconsideration and for costs were considered on the papers by Employment Judge Ayre in chambers on 13 May 2022. In a judgment dated 13 May 2022 and sent to the parties on 24 May 2022 ("**the Second Judgment**") Employment Judge Ayre rejected both applications.

4. The claimant applied for reconsideration of the Second Judgment on 6 June 2022 and his application was supplemented by a further email sent to the Tribunal on 23 June 2022.
5. The grounds for the application for reconsideration are not entirely clear, but they appear to include the following:
  - a. The Original Judgment contained a number of failings in the findings of fact, presented opinions as facts and omitted critical findings of cross examination.
  - b. The Employment Judge failed to discharge her judicial function and failed to comply with the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“**the Rules**”).
  - c. Allegations of procedural irregularities.
  - d. Suggestions of bias, prejudice and a failure to apply the Equal Treatment Bench Book.
  - e. The claimant’s previous applications for reconsideration and costs were misunderstood.
  - f. The Tribunal failed to comply with the overriding objective and the Rules when concluding that the claimant contributed 100% to his dismissal.
  - g. The respondent did not defend any part of the unfair dismissal claim.
6. 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.
7. 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 – including where substantially the same application has already been made and refused (unless there are special circumstances), then the application for reconsideration shall be refused.
8. 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'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***); and
  - e. The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment.
9. The overriding consideration when dealing with applications for reconsideration is 'is it necessary in the interests of justice' to reconsider the judgment.
  10. Having considered carefully the claimant's application, it is my view that there is no reasonable prospect of the Second Judgment being varied or revoked.
  11. Many of the points made in the claimant's application for reconsideration of the Second Judgment are the same as or similar to points made in the application for reconsideration of the Original Judgment. The claimant appears to be trying to make a second application for reconsideration of the Original Judgment. Such an application is now out of time, and in any event Employment Judge Ayre has already reconsidered the original judgment.
  12. The application for reconsideration of the decision to refuse the claimant's cost application (which is part of the Second Judgment) is made for the first time, but there is no reasonable prospect of that decision being varied or revoked. Nothing in the claimant's application for reconsideration suggests that it would be in the interests of justice to vary or revoke the original costs decision.

18 July 2022

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Employment Judge Ayre

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JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE