



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Egan

**Respondent:** Hywel Dda University Local Health Board

## JUDGMENT

The Claimant's application for reconsideration of the judgment sent to the parties on **14<sup>th</sup> June 2022** is refused.

## REASONS

1. This matter was before me on the 17<sup>th</sup> and 18<sup>th</sup> May 2022. I was unable to give oral reasons at the hearing and therefore reserved my judgment. The judgment and written reasons were sent to the parties on 14<sup>th</sup> June 2022.
2. Following the preliminary hearing, the Claimant sent additional evidence to the Tribunal and the Respondent on the 19<sup>th</sup> May 2022. The evidence was a copy of an employment contract between himself and an umbrella company. The absence of this document was the subject of cross-examination and potentially relevant to the issues in dispute at the hearing. Unfortunately, the correspondence of the 19<sup>th</sup> May 2022 and the copy of the employment contract were not made available to me until after my judgment was handed down. I have had sight of an email from the Respondent to state that they took no issue with the contract being placed before me.
3. I have also now had sight of an email from the Tribunal dated 1<sup>st</sup> July 2022 in which EJ Harfield invites the parties to confirm what it is they are requesting the Tribunal to do and what applications they are making. In response, the Claimant sent an email dated 14<sup>th</sup> July 2022. To summarise, he states that the additional evidence was obtained to dispel any allegation that he withheld evidence, he states that there continues to be direct evidence that the Respondent has withheld disclosure, he rejects my judgment handed down on 14<sup>th</sup> June 2022, he alleges I refused to hear the allegations relating to the Respondent deliberately misleading the Tribunal on dismissal and he requests that his application for a deposit order and strike out are considered.

4. I have also had sight of an email from the Respondent dated 1<sup>st</sup> July 2022 to state that they do not consider that the additional evidence would materially affect the outcome of the preliminary hearing and assert that the document does not support the Claimant's contention that at the material time he was an employee of the Respondent. The Respondent considers that no further action is required in relation to the Claimant's application.
5. Reading the Claimant's emails in totality, it would seem that he is requesting a reconsideration of my decision. In any event, given that I did not have sight of the document prior to reaching a decision, it is arguable that I should reconsider my decision in any event.
6. The Tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
7. The approach to be taken to applications for reconsideration was set out in the case of **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA** in the judgment of Simler P. The tribunal is required to:
  - 5.1 identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
  - 7.2. address each ground in turn and consider whether there is anything in each of the particular grounds relied on that might lead the ET to vary or revoke the decision; and
  - 7.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
8. In paragraph 34 and 35 of the judgment Simler P included the following:

"A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but

with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration. Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

9. I consider the oral evidence and make findings of fact at paragraphs 23 to 46 of my written reasons and reach conclusions at paragraph 47 onwards. I set out the relevant law at paragraphs 14 to 22.

10. I shall deal with the issues raised by the Claimant in turn:

a) The additional document does not change my view of the Claimant’s evidence as expressed at paragraph 28 of the judgment. There were numerous examples of the Claimant presenting as evasive, obtuse, or difficult. Whilst he has partially addressed the concern that he could not recall the presence of a contract sent to him, it does not change my assessment regarding his ability to recall the important aspects of fees and/or commissions and does not impact my overall assessment of his evidence. The additional document, as adduced by the Claimant, only adds further weight to the Respondent’s assertion that he was not an employee at the material time.

b) The Claimant continues to assert that the Respondent has withheld disclosure. I carefully considered the quality of evidence from Ms Thomas and Mr Walpole and preferred their accounts over that of the Claimant. At paragraph 44 of the written reasons, I specifically consider the Claimant’s assertion that there has been fabrication, or a conspiracy, and reject it entirely. The Claimant, in raising this issue within his email dated 14<sup>th</sup> July 2022, is only seeking to relitigate issues that have already been determined. This aspect of my judgment is intertwined with the surprising assertion by the Claimant that I “refused to hear that the Respondent has deliberately misled the Tribunal...and despite this being a predominant feature of the hearing it has not received any mention in EJ Duncan’s judgment”. This is simply incorrect. The Tribunal indulged the Claimant for two days whilst he put issues of fabrication to the Respondent’s witnesses without any evidence to support his assertion. The preliminary hearing was almost entirely dedicated to considering his case that there had been fabrication in respect of the employment relationship. It was a case that I rejected for the reasons given in my written reasons.

11. As outlined above, it is my view that the Claimant is effectively inviting the Tribunal to relitigate matters that have already been determined. The majority of the submissions made and evidence relied upon were advanced by the Claimant at the hearing. Where there is fresh evidence referred to, I conclude that this will not have any impact upon the findings made or conclusions reached. I therefore conclude that there is no reasonable prospect of the original decision being varied or revoked and the application for reconsideration is refused at a preliminary stage.

12. In respect of the reference made to an application for a deposit order, the Claimant's application was previously dismissed by way of EJ Moore on the 6<sup>th</sup> May 2022. In so far as the Claimant has invited the Tribunal to strike out the Respondent's Grounds of Resistance, this is plainly completely inappropriate given the circumstances of this case. There are factual matters that need to be determined and those matters are directly relevant to the claims that remain live following my judgment at the preliminary hearing. The matter shall remain listed for a one day case management hearing on a date to be determined, if not already fixed.

Employment Judge **G Duncan**

Date 17<sup>th</sup> August 2022

JUDGMENT SENT TO THE PARTIES ON 23 August 2022

FOR THE TRIBUNAL OFFICE Mr N Roche