



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Majoch

**Respondent:** Biffa Municipal Ltd

## JUDGMENT UPON RECONSIDERATION

The claimant's application dated 11 August 2022 for reconsideration of the judgment sent to the parties on 29 July 2022 is refused.

## REASONS

1. In a judgment dated 13 July 2022 and sent to the parties on 29 July 2022, following a 3 day hearing, the Tribunal unanimously found that the claimant was disabled, but dismissed the claimant's claims for disability discrimination, unfair dismissal, wrongful dismissal and unlawful deduction from wages.
2. On 11 August 2022 the claimant applied for reconsideration of the judgment. The grounds for the application are lengthy, running to 40 paragraphs and 5 pages. In summary, the basis of the application appears to be that:
  - a. There are special reasons that make it in the interests of justice to reconsider the judgment;
  - b. The claimant wishes to introduce additional documents;
  - c. The response form was filed late and did not contain the required information;
  - d. The respondent failed to comply with the case management orders;

- e. The claimant's representative is not legally qualified and English is her second language; and
  - f. The claimant's application to amend the claim had been refused
3. 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.
  4. 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.
  5. 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.
  6. 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***); and
  - 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.
7. The overriding consideration when dealing with applications for reconsideration is 'is it necessary in the interests of justice' to reconsider the judgment.
  8. None of the issues raised by the claimant in the application for reconsideration are ones which would make it in the interests of justice to reconsider the judgment for the following reasons:
    - a. There is no suggestion that the documents which the claimant now seeks to rely upon were not available at the time of the final hearing of the claim;
    - b. The response was filed within the time frame specified by the Tribunal when the claim form was served on the claimant, and the response was accepted by the Tribunal. This was explained to the claimant's representative during the course of the Tribunal hearing;
    - c. The alleged failure to comply with case management orders has already been raised by the claimant. The case was ready for trial at the start of the final hearing;
    - d. The qualifications and legal knowledge of the claimant's representative (Ms Dominik-Kryg) were known to the claimant prior to the start of the final hearing and he chose to be represented by Ms Dominik-Kryg; and
    - e. The claimant's application to amend the claim was properly considered and refused.
  9. For the above reasons there is in my view no reasonable prospect of the original judgment being varied or revoked. The claimant's application for reconsideration of the judgment is therefore refused.

18 August 2022

Employment Judge Ayre