



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Dale Hall

**Respondents:** Wilkinson Retail Ltd

**Heard at:** Nottingham

**On:** 25<sup>th</sup> November 2022 (In Chambers)

**Before:** Employment Judge Heap (Sitting Alone)

**Representation:**  
**Claimant:** Written representations  
**Respondent:** Written Representations

## JUDGMENT ON RECONSIDERATION

The Claimant's application for Reconsideration is refused and the Judgment sent to the parties on 23<sup>rd</sup> July 2022 is confirmed.

## REASONS

### BACKGROUND & THE ISSUES

1. This hearing was listed to deal with the Claimant's application for a reconsideration of the Judgment sent to the parties on 23<sup>rd</sup> July 2022 ("The Judgment") at which I struck out the claim on the basis that a fair hearing was no longer possible.
2. The striking out of the claim came as a result of an application made by the Respondent at an open Preliminary hearing which took place on 12<sup>th</sup> July 2022. That hearing had been listed following a previous Preliminary hearing at which I had refused an earlier application to strike out the claim as a result of the Claimant's non-compliance with Orders made. I had described at that time that the Claimant was very much in the last chance saloon and that I had only not struck out the claim at that time because he had assured me that he would be able to and would comply with the Orders that I made at that time. Those Orders were to disclose medical evidence that he had relating to the question of disability and confirm

whether or not his case was as it had been understood to be and set out in earlier Orders that had been made by Employment Judge Clark at a previous Preliminary hearing.

3. As I set out in my Judgment at the hearing of 12<sup>th</sup> July 2022, although the Claimant maintained in emails to the Tribunal and to the Respondent that he had complied with the Orders made he had in fact not done so. He had confirmed to the Tribunal (albeit not to the Respondent) that he “agrees with the Orders the previous Judge had set out” but that is not clear if he is referring to agreement with the analysis of his claim by Employment Judge Clark or something else. There had in that regard been a number of Preliminary hearings and Judicial intervention in the interim.
4. The Claimant also did not comply with the Orders that I made about sending his medical notes to the Respondent. Instead, he sent a handwritten note on an enquiry form previously used to indicate whether a party can attend a remote video hearing along with 56 out of the 97 pages of his medical records. He did not send a Medigold report that he had been Ordered to disclose at all. What documents were sent were only sent to the Tribunal who then had to copy them for the Respondent. As I also recorded in my Judgment striking out the claim, the lack of the remaining notes and records had impeded the Respondent from being able to set out its position on disability and the lack of clarity on the accuracy of Employment Judge Clark’s analysis of the claim has similarly left them unable to file an Amended Response.
5. I concluded that there was no longer a possibility of having a fair hearing of the claim. The full reasons for that are set out in the Judgment which should be read in conjunction with this one but in brief terms were as follows:
  - a. In reality, the claim had not moved on materially in terms of understanding the basis of the remaining complaints advanced and dealing with the question of disability. Indeed, if anything matters had become less clear because the Claimant had written to the Tribunal making reference to a back condition that he said “is all related” to the claim despite having told Employment Judge Butler at an earlier Preliminary hearing that the condition that he was relying on as a disability was depression and his mental health. Moreover, in respect of the unfair dismissal complaint particularly the Claimant denied that there was a potentially fair reason for dismissal but was unable to say what he thought the real reason was and the position as he had not confirmed whether Employment Judge Clark’s analysis of the remaining parts of the claim was correct or not;
  - b. The things that the Claimant was Ordered to do previously was straightforward and the proceedings would only become more complicated as they proceeded. It seemed inconceivable that the Claimant was going to be able to undertake all of that further work – even with adjustments from the Tribunal - if his mental health had left him unable to manage to send 97 pages of medical notes and

one report which he already had to the Respondent and to confirm what his claim was;

- c. The Claimant had not attended the Preliminary hearing on 12<sup>th</sup> July having telephoned the Tribunal indicating that he thought that someone was going to telephone him, although it is difficult to see how he thought that given that we had put the time of the hearing back to allow him time to travel in and the Orders made at the last Preliminary hearing clearly set out the arrangements. In view of that, even dealing with things in bite sized chunks, it appeared very unlikely to say the least that the Claimant was going to be able to undertake the other tasks necessary to prepare for a full hearing either in a timely and proportionate way or indeed at all;
  - d. The full hearing, even assuming that things from that time on went smoothly, which itself seemed highly unlikely, would not take place until well into 2023 and that the cogency of the evidence would be impacted because witnesses would be giving evidence about things that happened over three and a half years ago assuming that matters reached a final hearing. One witness had already left the Respondent by that stage and their cooperation as a witness may well be difficult; and
  - e. The position of other Tribunal users needed to be considered because the claim had by that stage already occupied the time of four Judges in five Preliminary hearings over the course of the last two years and in reality matters had not moved much if any further forward.
6. I therefore concluded taking all of those matters into account that there was no longer any prospect of a fair hearing taking place within a reasonable period of time and the only course that I could therefore take was to strike out the claims.
  7. The Judgment was sent to the parties on 23<sup>rd</sup> July 2022. Shortly before that a friend of the Claimant, Mr. Robinson, emailed the Tribunal to say that he was now acting as his advocate, apologising for the Claimant not attending the Preliminary hearing, that the proceedings had caused the Claimant a great deal of stress and that as a result he had had sleepless nights, suicidal ideations and hair loss and that he had taken steps to assist the Claimant in getting the help that he needed.
  8. I caused a letter to be sent to Mr. Robinson to explain that the claim had been struck out and how to apply for reconsideration or appeal to the Employment Appeal Tribunal ("EAT").
  9. The Claimant then emailed the Tribunal directly on 25<sup>th</sup> July 2022 to say that he was going to appeal the Judgment. The Claimant also emailed the following day to set out the following:

*"Hi MidlandsEastET once again I am trying to access something and your site won't allow me to even download the link to see what instructions are to be taken into account I am wanting to appeal my decision and have a meeting with citizen's advice on Thursday so*

*going to go through the forms and prove to yoh (sic) how ill I actually am and I genuinely did think it was on the phone and I was up most of the night unable to sleep because I was so anxious over it then I didn't sleep till 7 in morning due to panic attacks and the anxiety has been too much I am trying so hard for you to understand but it seems because I didn't attend I seem not bothered I actually am very bothered about the situation. Its's been going on for so long because it's effected (sic) my mental health so badly that's why I am applying for a reconsideration on this case. I can't deal with the fact it seems they have slipped away and the blame has been put onto me just have to show you that j (sic) am entitled to compensation and proof on how badly I and many others have been treated. So thank you for listening but I do need to appeal this and hope you will find the time stand by my side and take another look at my case many thanks Dale."*

10. The Tribunal wrote to both the Claimant and Mr. Robinson on 9<sup>th</sup> August 2022 explaining that any appeal lay with the EAT and that if an application for reconsideration was being made then the grounds for that application and why it was in the interests of justice to vary or revoke the Judgment needed to be provided.
11. The Claimant emailed the Tribunal again on 11<sup>th</sup> August 2022 setting out as follows:

*"I am writing to ask this honourable Court to kindly reinstate my employment tribunal case.*

*I am so sorry that I failed to attend the original hearing and I can appreciate how precious Court time is as well as the backlog of cases due to Covid 19.*

*However, there are reasons why I did not attend the hearing, originally, I believed the hearing was over the phone on 12/7/2022 which I now know was incorrect. My health has not been good and mentally I have struggled which has stopped me acting in the way a normal person would. I have suffered with anxiety for many years and have been diagnosed with Emotionally unstable personality disorder.*

*I am now looking to live with my illness and have been engaging with Mind for Counselling and have the support of my GP Surgery. I am looking to move house and learn to live with my illness, I am looking to get my life back on track after a difficult few years.*

*I feel that being able to get the chance to out my Employment claim to a tribunal would be beneficial for my health as I feel very strongly about how very badly I was when employed and dismissed by Wilkinsons.*

*I would ask that in the Interests of Justice that my case be reinstated, and I will guarantee that should the Court be minded to do so then I will attend any future hearings and comply with any directions given by the Court".*

12. The following day I directed that the Claimant's emails of 22<sup>nd</sup> July, 25<sup>th</sup> July and 11<sup>th</sup> August 2022 be together taken as an application for reconsideration and the Respondent was asked for their comments and for both parties to confirm if they wanted a hearing or for the matter to be determined on the papers. Unfortunately, there was a delay of over a month in that direction being actioned by the administration and the parties were not written to in that regard until 20<sup>th</sup> September 2022.

13. In the meantime, the Claimant had emailed the Tribunal again on 1<sup>st</sup> September in the following terms which I have also taken into account in considering his application:

*"I have wrote to the tribunal and I have asked for a reconsideration on my case as I am totally mentally ruined by this and it needs to be looked at again I can't live my life when this has happened please can you confirm if you have received my email and also the letter I sent in a month ago regarding the consideration. I had to wait for my security subscriber to get off sick and also have time to fill the form in I have wrote you a letter and genuinely desperately with all my heart would appreciate you looking back into this many thanks".*

14. The Claimant wrote again on 19<sup>th</sup> September 2022 as follows and again I have taken that into account in considering his application:

*"I have let you know from the day the judge wasn't able to come up with a true decision but I have written in writing and also sent the documents in regarding a possible final hearing so I can fully show you why I had to appeal on the decision. I am having ongoing help with my mental health still finding it is helping now also I have started college for a goal and to slowly gain my confidence back but I truly appreciate time had passed somewhat but I need to show you this is a big barrier in my life to move forward fully. Looking forward to hearing from you I have copied my social subscriber in this also incase (sic) you have any questions we can both answer".*

15. Although the Claimant referred in that email to having provided documents for the final hearing, nothing has been received by the Tribunal in that regard.

16. In reply to the Tribunal's letter of 20<sup>th</sup> September 2022 Mr. Robinson wrote to say that he was no longer able to represent the Claimant but was happy to be copied into correspondence so that he could speak to him as a friend.

17. On 29<sup>th</sup> September 2022 the Respondent replied to the Claimant's application. I do not set that out in full here but the following broad points were made:

- a. The application had been made out of time;
- b. The application did not address the reasons that the claim had been struck out;

- c. That it was not necessary in the interests of justice to reconsider the Judgment; and
  - d. That the Judgment was plainly right.
18. The Respondent asked for the application to be considered on the papers. The Claimant did not reply to the enquiry that the Tribunal had made in that regard.
19. On 1<sup>st</sup> October 2022 the Claimant again emailed the Tribunal in the following terms and again I have taken that into account:

*“Happy to go ahead an (sic) have John Robinson attached in these emails to ensure I do exactly the right process and course of action to fulfill (sic) a decision. again apologies for my mental health issues. I will ensure I completed any more fulfilments. I will also add my social worker (Steven social subscriber) and my housing officer (Amy Waters) into this email so they can be aware an (sic) help if needs be. They can give you a deeper understanding on my mental health and am in an (sic) much better place so i can apply myself fully to prove my mental health at the time was infact (sic) bad due to being treated unfairly. Thank you for your time”.*

20. On 8<sup>th</sup> November 2022 the parties were informed that the application was to be considered on the papers and without a hearing. The Claimant replied the following day, which I have also taken into account, as follows:

*“Hi sorry I thought I did confirm I’ll do anything to get the result deserved many thanks and thought I did follow instructions if not do you need anything from my I did send this in email and also letter but I can send again if needs be many thanks just wanted to know why they said I wasn’t ill at the time when I also was going through occupational health and also my supervisor and manger’s (sic) knew my full situations at the time and ongoing many thanks.”*

## **THE LAW**

21. Rules 70 to 73 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (“The Regulations”) set out the provisions concerning the Reconsideration of an Employment Tribunal Judgment.

22. Rule 70 provides as follows:

*“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”*

23. The test for reconsideration is simply whether such reconsideration is in the interests of justice.

24. The interests of justice means having regard not only to the interests of the party seeking 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 (see **Outasight VB Ltd v Brown UKEAT/0253/14/LA**).
25. Rule 72 of the Regulations deals with the time in which an application for Reconsideration should be made which is within 14 days of the date on which the written outcome was sent to the parties.
26. The provisions of Rule 5 of the Regulations deal with extensions of time and say this:

***“Extending or shortening time***

***5. The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.”***

**CONCLUSIONS**

27. I begin with the position as to whether the Claimant’s application was made within the time limit provided for by Rule 72 of the Regulations. The Judgment was sent to the parties on 23<sup>rd</sup> July 2022. The Claimant first intimated that he wanted the Judgment to be reconsidered two days later.
28. Although he subsequently set out further information within the emails which I have referred to above, I am satisfied that that was simply putting meat on the bones on an in-time application. However, even if I had not taken that view, I would nevertheless have extended time under Rule 5 of the Regulations for the application to be determined.
29. I realise the strength of feeling that the Claimant has about these proceedings and he can be assured that I have considered all that he has said in his emails very carefully and have taken them all into account.
30. Unfortunately, none of the things that the Claimant says in his application demonstrate that a fair hearing does remain possible. His email of 11<sup>th</sup> August 2022 reiterated the same things that he had told me in respect of the previous Preliminary hearing that I had held where I refused the application to strike out the claim and referred to the Claimant as being in the last chance saloon. The Claimant had assured me at that time that he was getting help and guaranteed that he would comply with the Orders that I had made but he still was unable to do so. I cannot see that there has been anything to change the position between what he told me at that Preliminary hearing and what he says now or that he will be able to comply with Orders and advance this claim to a full hearing either at all or within a reasonable period of time. Whilst he may genuinely believe that he can and will comply, the best test of what is likely to happen is exactly what has happened thus far where the Claimant has not been able to comply in totality with any of the Orders that have been made by various Employment Judges.

- 31. Whilst the Claimant referred to it being good for his health to have the claim reinstated, that unfortunately flies in the face of what has occurred thus far and what he was telling Mr. Robinson that the proceedings had caused him stress and anxiety, insomnia, hair loss and suicidal ideation and what he had said in his email of 25<sup>th</sup> July 2022 to the Tribunal.
- 32. However, even if that was not the case that does not address how a fair hearing of this matter would be possible given the conclusions reached in the Judgment.
- 33. The issue of disability still remains in dispute and the claim remains unclear. It would need one if not more further Preliminary hearings and, even in the very unlikely event that the Claimant was able to now prepare for a full hearing without delay, such a hearing will not now be before 2024. That would be around four years after the events that appear to give rise to the claim.
- 34. As I have observed above, the cogency of the evidence will undoubtedly be impacted by that and the interests of justice means having regard not only to the interests of the Claimant, 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. I need to consider the impact on the Respondent in being able to defend a claim that was issued well over two years ago and in circumstances where witnesses who are still able to attend are going to be asked questions about decisions that they made well in excess of that period of time. I also need to consider the impact on other Tribunal users for the reasons that I gave previously in the Judgment and none of those matters have changed.
- 35. For all of those reasons, it is not in the interests of justice to grant the Claimant's application for Reconsideration because a fair hearing still does not remain possible and the Judgment is therefore confirmed.

Employment Judge Heap

Date: 25<sup>th</sup> November 2022  
JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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