



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Farnan

**Respondent:** Infor (United Kingdom) Limited

## JUDGMENT

The Claimant's application dated 13 October 2022 for reconsideration of the Judgment sent to the parties on 29 September 2022 is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013. There is no reasonable prospect of the original decision being varied or revoked.

## REASONS

1. Under Rule 70 of the Employment Tribunal Rules of Procedure 2013 a Tribunal "may reconsider any judgment where it is necessary in the interests of justice to do so", and upon reconsideration the decision may be confirmed, varied or revoked.
2. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise, it is to be decided, with or without a hearing, by the Tribunal that heard it.
3. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision. The prescribed grounds were that the decision was made because of an administrative error, a party did not receive notice of the hearing, the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. As for the interests of justice test, the case law establishes that while this allows for a broad discretion, it must be exercised judicially, which means having regard not only to the interests of the party seeking the 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.

4. The Employment Appeal Tribunal confirmed in Outasight VB Ltd v Brown UKEAT/0253/14/LA that the 2013 rules did not change the approach to be adopted or broaden the scope of the grounds for reconsideration. A reconsideration is not a means by which a party can reargue the case that was, or could have been, made at the hearing. Something particular is required to establish this ground, beyond the fact that the party is disappointed with the decision.
5. The Claimant's application discloses no grounds for reconsideration, but in the main seeks to argue points that were or could, with proper preparation by the Claimant, have been dealt with at the hearing. In response to the particular points raised:
6. Paragraph 1. The Claimant's representative refers to failure by the Tribunal to properly consider the Claimant's applications of 15 and 22 September. The letter of 15<sup>th</sup> September is an application for postponement which was dealt with by REJWade the same day and refused. The email of 22<sup>nd</sup> September (enclosed with the application for reconsideration) is a letter to the Respondent, copied to the Tribunal and is not an application to the Tribunal. They do not "ostensibly" make applications for witness orders and/or an order that the Respondent include relevant documents in the hearing bundle. Save for an email of 23 October 2019 from Mr Thompson, referred to below, the reconsideration application does not state what documents were missing from the bundle, when the Claimant asked for them to be included, and what relevant evidence was not before the Tribunal in consequence. During the hearing the Claimant repeatedly referred to missing documents but when asked to specify which documents were missing was unable to do so. The Claimant is referred to paragraphs 9 and 10 of the written reasons.
7. As to witness orders on 19 August the Claimant wrote to the Tribunal asking for "confirmation" that her witnesses could testify as the Respondent "has tended to get persons to sign NDA's to intimidate them into silence" There was no application for a witness order. On 5<sup>th</sup> September the Tribunal wrote to the Respondent asking it to confirm that it would not seek to rely on the terms of any non disclosure agreement or anything else to prevent the witnesses who the Claimant was proposing to call. The Respondent provided that confirmation. The Claimant provided witness statements from two witnesses, who did not however attend. The Claimant does not explain why the interests of justice requires a reconsideration on this ground.
8. Paragraph 2 .The calendar invite was before the Tribunal, considered and referred to at paragraphs 31 and 32 of the Reasons. The Claimant is simply seeking to reargue matters which were already before the Tribunal at the hearing,

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9. Paragraph 3. The Tribunal cannot comment on a document that it has not seen, (and was not attached in the additional material with the reconsideration application). It is said that the Claimant had sought disclosure of this email, but no document has been enclosed to evidence any such application. However, as pointed out by the Respondent there was no pleaded protected disclosure on 23<sup>rd</sup> October 2019, so that its relevance is not clear.
10. Paragraph 4. The protected disclosure referred to in of the Claimant's application was struck out following the Claimant's failure to pay the deposit ordered by EJ James.
11. In respect of paragraph 5 the Claimant seeks to reopen matters that were fully ventilated at the hearing. if it is said that the Tribunal's findings were perverse or an error of law this is properly a matter for appeal.

Employment Judge F Spencer  
Dated 6<sup>th</sup> December 2022

JUDGMENT SENT TO THE PARTIES ON

06/12/2022

FOR THE TRIBUNAL OFFICE