



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Fadehan

**Respondent:** Total Resources (UK) Ltd

## JUDGMENT

The claimant's applications dated 22 October 2022 and 15 November 2022 for reconsideration of the judgment sent to the parties on 18 October 2022 and written reasons sent to the parties on 2 November 2022 are refused.

## REASONS

1. I heard this case with members on 12-14 October 2022. Our decision was unanimous. We dismissed the claim on its merits. We also dismissed one part of it on time limitation in addition. The claimant requested written reasons at the end of the hearing, which was acknowledged.
2. Our written judgment was signed by me on 14 October 2022. It was sent to the parties on 18 October 2022.
3. The claimant then wrote to the Tribunal on 22 October 2022. He asked again for written reasons. He also asked to "appeal" against the decision. He took issue with the decision in various ways.
4. That correspondence was referred to me on 27 October 2022. I replied to the Tribunal administration on 28 October 2022 with an instruction that the claimant be told that: (1) written reasons would be provided shortly and (2) an appeal could not be made to the Employment Tribunal, but could be made to the Employment Appeal Tribunal, and that once he had the written reasons he should consider what steps he wished to take, by reference to the explanatory material that accompanies the judgment. I did not consider at that time that the claimant was applying for a reconsideration. I did not invite him to do so.
5. It does not appear that that instruction was acted upon by the Tribunal administration.
6. The written reasons were signed by me on 28 October 2022 and sent to the parties on 2 November 2022.
7. It seems that the claimant then wrote to the Tribunal again on 15 November 2022. He again sought to "appeal" the judgment. He set out his grounds in

greater detail. It appears that this was referred to the Acting Regional Employment Judge rather than to me. It also seems that the Acting Regional Employment Judge was unaware that written reasons had been sent to the parties. He treated the claimant's correspondence as an application for reconsideration. He refused the application as being out of time. That was recorded in the Tribunal's letter of 23 November 2022.

8. I was not aware of the Acting Regional Employment Judge's decision until the matter was referred to me on 12 December 2022. That referral was the result of a telephone call from the claimant regarding the Tribunal's letter of 23 November 2022.
9. I immediately advised the Acting Regional Employment Judge of the actual position, as I understood it. As a result, on 14 December 2022 he revoked his decision recorded in the Tribunal's letter of 23 November 2022. He referred the matter back to me to consider the claimant's applications, which I now do.
10. The claimant's correspondence of 22 October 2022 and 15 November 2022 uses the language of "appeal" rather than "reconsideration" (or even "review", as the process was once known). There is no reference to rules 70-73 (the relevant procedural rules on reconsideration) or to a reconsideration being necessary "in the interests of justice" or to a request that the judgment be revoked or varied. That may not matter if in essence the correspondence should be treated as being an application for consideration.
11. In the circumstances described above, and upon reflection, I consider it to be appropriate to treat the claimant's correspondence of 22 October 2022 and 15 November 2022 as if it were an application for reconsideration under rules 70-73. However, if the claimant wishes to "appeal" the judgment, then he must do so in accordance with the rules of procedure of the Employment Appeal Tribunal (including the relevant time limits). He cannot "appeal" to the Employment Tribunal. There is nothing to prevent him from appealing the judgment to the Employment Appeal Tribunal and also asking this Tribunal to reconsider its decision.
12. I turn then to consider the claimant's correspondence of 22 October 2022 and 15 November 2022 under the first stage in rule 72(1).
13. The first point that the claimant makes in his first application dated 22 October 2022 is that he was not provided with access to the respondent's witness statements until the first day of the hearing and that this adversely affected his preparation as a litigant in person.
14. This matter was discussed at the outset of the hearing. The respondent's position was that it had been unable to agree mutual exchange of witness statements with the claimant. That was because the claimant refused to provide a copy of his witness statement(s). His position was that he had done so some time before. The respondent did not have a copy of the statement(s). It asked to be provided with a copy. The claimant refused. As a result, the respondent provided copies of its statements to the claimant,

but password-protected, intending that the password would be provided once the claimant had provided his statements.

15. In this respect, neither party displayed the co-operation that the overriding objective in rule 2 of the procedural rules requires. However, the claimant was the prime cause of the situation in which he found himself on the first morning of the hearing. He had also inadvisably approached one of the respondent's witnesses, as is recorded in the written reasons, which led to an unsuccessful application by the respondent to strike out the claim. He had also produced somewhat irregular witness statements from another witness.
16. The Tribunal dealt with these matters at the start of the hearing. There was a brief discussion about whether the hearing might be adjourned or even postponed. Neither party wanted that. No application to that effect was made. The claimant was anxious to proceed.
17. Instead it was agreed that, as the Tribunal itself had not seen or read the witness statements of either party, it would put back the start of the hearing until 1.30pm so that everyone could read the witness statements, which were relatively short and comprised three statements from the respondent and two from the claimant. The claimant would also give evidence first and so would not need to question the respondent's witnesses until the second day (in the event, the respondent's witness evidence commenced just before 12 noon on the second day).
18. I do not consider that there is a reasonable prospect of the original decision being varied or revoked on this ground. The Tribunal did not consider that the claimant was disadvantaged by the situation of which he had been the primary cause. He did not wish the hearing to be adjourned or postponed or delayed further. He could have asked for extra time, but he did not do so. In the event, he conducted a creditable cross-examination of the respondent's witnesses. It would not be in the interests of justice to reconsider the judgment on this ground.
19. The remaining points that the claimant makes in his first application dated 22 October 2022 assert that there was no evidence for the findings that supported the respondent's grounds of resistance to the claim.
20. The Tribunal had before it witness statements (or their equivalent) from five witnesses, of which three witnesses (including the claimant) gave live evidence, which was subject to cross examination and to questions from the Tribunal. It also had documentary evidence contributed by both parties. The Tribunal dealt with its assessment of that evidence in its written reasons. That included the weight, if any, to be attached to witness evidence; the credibility of that evidence; and the extent, if any, to which the evidence was corroborated by documentary evidence or other witness evidence. It was on that basis that the Tribunal made findings of fact founded on the balance of probabilities and alert to where the burden of proof resided on any evidential or legal issue.

21. I do not consider that there is a reasonable prospect of the original decision being varied or revoked on this ground. The Tribunal is the ultimate arbiter of the findings of fact based upon its assessment of the evidence. Its findings are challengeable upon limited grounds, including perversity or a failure to account properly for the evidence before it, on an appeal rather than upon reconsideration. It would not be in the interests of justice to reconsider the judgment on this ground.
22. The claimant's second application dated 15 November 2022 develops the above points in more detail. However, that does not disturb my initial impression of the application for reconsideration. The Tribunal can only make findings based upon the evidence put before it at the hearing. That includes not only the witness statements and the documentary evidence, but also the oral evidence that the witnesses give under cross-examination or in response to questions.
23. The claimant does not suggest that he has new or fresh evidence that could not have been presented at the original hearing. The Tribunal explained in its written reasons how it approached the evidence of the two absent witnesses. In essence, the claimant disagrees with the Tribunal's assessment of the evidence and the findings of fact it made based upon that evidence. He also takes issue with the conclusions the Tribunal drew from its structured approach to the questions posed of it by section 26 of the Equality Act 2010. The last step within that analysis was crucial to its conclusion on the racial harassment complaint.
24. I do not consider that there is a reasonable prospect of the original decision being varied or revoked on these grounds. It would not be in the interests of justice to reconsider the judgment on any of the grounds set out in the claimant's second application dated 15 November 2022.
25. The reconsideration process is apt where the Tribunal has made an obvious error that can be best remedied by varying or revoking the judgment upon review; or where there is new evidence unavailable at the time of the hearing; or where there has been a procedural irregularity or an obvious injustice. The threshold is set by what is in the interests of justice. However, there is nothing in either application that suggests that that threshold has been reached. The applications largely reveal that the claimant is unhappy with the Tribunal's decision and that he disagrees with it. That is not enough for the purposes of rules 70-73. The applications are refused at the first stage under rule 72(1).

**Judge Brian Doyle**  
**DATE: 15 December 2022**