



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Merrell  
**Respondent:** Bell Decorating Group

## JUDGMENT

The claimant's application dated **21 July 2022** for reconsideration of the judgment sent to the parties on **12 July 2022** is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because

1. First, pursuant to rule 71 of the Employment Tribunal Rules of Procedure 2013, an application for reconsideration must be made in writing, and copied to all parties of the appeal, within 14 days of the date the written reasons were sent.
2. This application for reconsideration has been made within time. There is no indication within the application that it has been copied to Bell Decorating Group. The application does not therefore meet rule 71.
3. Furthermore, I have considered whether it is necessary in the interests of justice for this matter to be reconsidered and for the reasons set out below, conclude it is not. Pursuant to rule 72(1) I consider whether there are reasonable prospects of the original decision being varied or revoked for the reasons set out by [Mr Merrell] and I {conclude that there are not}. I understand [Mr Merrell's] argument for reconsideration to be for four reasons:
  - a. That the ACAS code states that the disciplinary procedure should have been put on hold whilst the grievance was dealt with.
  - b. That [Mr Merrell] was not offered support from Bell Decorating Group for his mental health.
  - c. He was only informed the day before the hearing that the witnesses would be giving evidence

- d. That video evidence was not provided for use at the hearing which would have assisted him.

4. Taking these points in turn:

**ACAS code:**

5. At the hearing, Mr Merrell argued that the procedure in dismissing him was unfair because the decision maker did not have the HSE report in front of him. He confirmed that he had no other complaint regarding the procedure.
6. Mr Merrell cannot now add allegations to his claim after judgment has been given. As the allegation was not made before or at the hearing, the Respondent has had no opportunity to respond to this allegation nor was it considered in the Tribunal decision.

**Support for Mental Health**

7. It is not clear from Mr Merrell's application why it is in the interests of justice that the decision be reconsidered on this basis. Mr Merrell indicated at the hearing that he felt his mental health was made worse as a result of the grievance not the dismissal. He did not seek to pursue any claim on the basis of his mental health. There is no reasonable prospect of the decision being varied or revoked on this basis.

**Witness evidence**

8. Mr Merrell is correct that he did not receive the witness statements until the evening before the hearing. The Respondents had made an application for postponement as Mr Merrell had not set out the full details of part of his claim. I have checked my note of hearing and the late provision of witness statements was discussed with Mr Merrell. He was explained the process of cross examination and asked whether he felt he could continue with the hearing. He confirmed he wished to proceed and the Respondent also confirmed they were in a position to proceed without a postponement.
9. Mr Merrell has not set out any reason why, given he confirmed he was happy to proceed notwithstanding the late provision of witness statements, it is in the interests of justice for the case to now be reconsidered. He has not set out any reason why he was prejudiced by the late provision, or what other questions, or evidence he would have wished to be before the court had he had longer to consider the statements. I therefore conclude there is no reasonable prospect of the decision being varied or revoked on this basis.

**Video evidence.**

10. Mr Merrell argues that there was video evidence he wished to be before the Tribunal. He does not detail why it would be in the interests of justice for the case to be reconsidered on this basis. At the hearing, he made the Tribunal aware of a recording he had of the disciplinary appeal meeting. The Respondent confirmed they no longer had a copy of it. Mr Merrell had been unable to submit the video as it was too large for him to send. This is therefore not new evidence, but evidence that the parties were aware of at the time of the hearing.
11. As Mr Merrell held the only copy and could not transfer it, he was given the opportunity to show the Tribunal any part of the recording, and cross examine the witnesses on the basis of the content of the recording. He was happy to proceed on that basis. There is no reasonable prospect of the decision being varied or revoked because of this evidence.

**Case Number: 1405875/2020 & 1401252/2021**

Employment Judge Scott  
Date: 05 September 2022  
Amended: 19 December 2022

Amended Judgment sent to the Parties:  
04 January 2023

FOR THE TRIBUNAL OFFICE