



# EMPLOYMENT TRIBUNALS

**Claimant:** Paul Knight  
**Respondent:** Liverpool Football Club and Athletic Grounds Limited  
**Dated:** 19 February 2023  
**Before:** Employment Judge Liz Ord

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

The tribunal's decision of the 11 July 2022 to extend time for both the presentation of the claimant's unfair dismissal complaint and his disability discrimination complaint, is confirmed.

## REASONS

### Introduction

1. The preliminary hearing, at which an oral judgement was given, took place on 11 July 2022. Written reasons for the judgment were produced on 28 July 2022. The respondent's application for reconsideration relates only to the aspects of the judgment contained within paragraphs 51 to 59 of the written reasons, and this reconsideration is accordingly confined to those aspects.

### Law

2. I have taken account of the law as set out in my written judgment of 28 July 2022. I have also had regard to the case law set out in the respondent's application. In addition, I have considered the following law and procedure on reconsideration.

### *Reconsideration Rules*

3. The tribunal's powers of reconsideration are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedures 2013.
4. The procedure for reconsideration under rule 72 is for the Employment Judge who heard the case to consider any application made and decide whether

there are reasonable prospects of the original decision being varied or revoked. If the judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the application will be considered on notice to the parties.

5. Rule 70 provides a single ground for reconsideration, namely where “it is necessary in the interests of justice to do so”. On reconsideration, the original decision may be confirmed, varied or revoked and if revoked, it may be taken again.
6. The tribunal is also required to give effect to the overriding objective set out in rule 2, of ensuring that it deals with the case justly and fairly.

#### *Reconsideration Caselaw*

7. The “interests of justice” ground relates to the interests of both sides. In **Outsight VB Ltd v Brown** 2015 ICR D11, EAT, Her Honour Judge Eady QC referred to exercising the discretion 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’.
8. In **Newcastle upon Tyne City Council v Marsden** [2010] ICR 743 at [17] Underhill J referred to the injustice of giving the losing party a “second bite of the cherry”.
9. In **Stevenson v Golden Wonder Ltd** [1977] IRLR 474, EAT Lord McDonald said of the old review provisions that they were “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”.
10. It may be appropriate to reconsider, if a party for some reason has not had a fair opportunity to address the Tribunal on a particular point - **Trimble v Supertravel Ltd** [1982] ICR 440.
11. Reconsiderations are therefore best seen as limited exceptions to the general rule that employment tribunal decisions should not be reopened and relitigated.

#### **Grounds for the application**

##### ***1- Date of dismissal***

12. The respondent submits that, whilst the Effective Date of Termination (EDT) was correctly stated in the written judgment, Employment Judge Ord incorrectly communicated to the claimant and counsel for the respondent at the preliminary hearing that the EDT was 21 July 2021.
13. The claimant’s last day of employment was 28 April 2021. He had a contractual notice period of 12 weeks, but he was given a Payment in Lieu of Notice (PILON), for which there was no contractual provision. He commenced ACAS early conciliation on 28 October 2021 and his ACAS certificate was dated 12 November 2021. He presented his ET1 on 9 December 2021.

14. At the preliminary hearing on 11 July 2022, the claimant submitted that his EDT was the 21 July 2021, being the last day of his contractual notice period of 12 weeks. Therefore, his case was that the primary limitation period expired on 20 October 2021. If this were correct, his claim was about one and a half months out of time.
15. Counsel for the respondent submitted that the EDT was the last day of employment, being 28 April 2021, making the claim well over four months out of time. However, when asked by the tribunal for his views on the claimant's contention that the EDT should be extended by the PILON period, counsel replied that he was unsure of the legal position. Neither the tribunal nor counsel for the respondent was able to turn up the relevant provision at the hearing, and accordingly counsel made his submissions on the basis the EDT was the last day of the notice period, being 21 July 2021.
16. The tribunal determined the matter and erroneously gave oral judgment on the basis the EDT was extended to 21 July 2021. The respondent asked for written reasons and before providing them, Employment Judge Ord checked the legislation.
17. Section 97(1) of the Employment Rights Act 1996 (ERA) states the EDT:
  - a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,
  - b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect.
18. Section 97(2) makes provision for extension of the EDT by the minimum statutory notice period stipulated in s86 ERA, in certain circumstances when the contract of employment is terminated by the employer with less than this minimum notice. However, these circumstances are limited and do not include extending the date from which time limits run.
19. Consequently, the claim falls within section 97(1)(b) and the EDT is the date of termination of employment, being 28 April 2021, and not the extended date of 21 July 2021.
20. Employment Judge Ord therefore informally reconsidered the matter based on this earlier date. Having reviewed the evidence, she reached the conclusion that the earlier date made no difference to her decision. Therefore, she proceeded to write the written reasons on the basis that the 28 April 2021 was the EDT.
21. However, this approach was procedurally incorrect. Upon discovering the mistake in dates, a formal reconsideration should have been undertaken, following rules 70 to 73 of the Employment Tribunals Rules of Procedure, and seeking the parties' views.
22. On 12 August 2022 the respondent applied for a reconsideration and this was forwarded to Employment Judge Ord on 16 September 2022. On considering the application on 11 October 2022, she agreed with the respondent that it was in the interests of justice to reconsider the judgment. The parties were given time to make any further representations and to say whether they wanted a hearing. The claimant did not respond. The respondent had already confirmed that it was content for the matter to be determined on the papers.

***2- Whether it was reasonably practicable to present the claims in time***

23. The respondent submits that the claimant provided no evidence to support the tribunal's conclusion at paragraph 54 of the judgment that *"The extent of the claimant's depression had such an adverse impact on his ability to function as to*

*make it not reasonably practicable to commence proceedings within time.”*

24. The claimant gave oral evidence at the hearing and he came across as a genuine, credible witness, who did not exaggerate his situation. Accordingly, the tribunal accepts his evidence.
25. He was dismissed on the grounds of capability following a period of absence due to ill health caused by spinal arthritis, back pain and depression. He gave evidence that his depression was particularly bad during lockdown and after his dismissal. He was already taking anti-depressants when his employment was terminated, and he continued to take them. He was also in pain with his back. He was not in a good place mentally or physically.
26. The claimant told the tribunal that during this time he was unable to do much and just stayed in the house looking at the four walls, and did not want to go out. It was only with the encouragement and help of a friend that he eventually managed to put together a claim to the employment tribunal.
27. He had not provided medical records to the tribunal for the hearing. However, he told the tribunal that he was represented by a lay representative, Mr Simon Pine, and all tribunal correspondence had gone to Mr Pine. Mr Pine had not communicated the orders of the tribunal to him and accordingly he had not been aware of the need to provide medical evidence. In fact, he did not know about this preliminary hearing and was only made aware of it when the tribunal clerk contacted him on the morning of the hearing to find out where he was. The tribunal does not find the claimant to be blameworthy for the omission under these circumstances.
28. There were Occupational Health Reports in the bundle, which were helpful. The following extracts are of particular note:
  - 29.1 The undated Occupational Health referral form (pp 72-76) at section 7 states:

*“In addition to back problems Paul has also had depression, which he has also had a challenge with throughout the lockdown period. Paul has more recently been working within our allotment, which he advised he enjoys but thinks this may not have helped with his back.”*
  - 29.2 The undated Occupational Health referral form (pp 77-81) at section 1 states:

*“...He has arthritis in his spine. ... medication...makes him feel queasy.....he gets fatigued when doing any sort of exercise/physical activity .....Paul has also had ongoing mental health challenges, which the pandemic and lockdown have had an impact on....”*
  - 29.3 The Occupational Health report of 15 October 2020 (pp 86-88) states:

*“Mr Knight reports a history and ongoing treatment for depression. He reports this issue is well-managed with his medication. In addition, Mr Knight does report a history of lower back pain for several years and has a diagnosis of spinal arthritis.”*
  - 29.4 The Occupational Health report of 25 March 2021 (pp 106-107) states:

*“Mr Knight reports a history and ongoing treatment for depression and lower back pain and spinal arthritis.....He currently reports continued problems with pain, limited mobility and extreme fatigue. He reports his mental health issues continue but are generally managed with his medication.”*

*“I can confirm that Mr Knight continues to suffer from chronic health issues such as mental health, lower back pain and spinal arthritis.”*

29. From this documentary evidence, it would seem that the claimant had been suffering from mental health issues and back problems for a significant period of time. His dismissal would have come as a significant blow to him and his long standing depression was likely to have worsened on termination of his employment.
30. Depression is debilitating and the tribunal accepts that it impacted on the claimant to such an extent after his dismissal as to make it not reasonably feasible, and therefore not reasonably practicable, for him to present his claim on time.
31. The respondent submits that the claimant provided no explanation for not presenting his claim at the stage he instructed his representative and/or commenced ACAS early conciliation on 28 October 2021, six weeks before the claim was presented to the tribunal.
32. The claimant gave evidence that he was still suffering from depression at this time and was unaware of time limits. The impacts of depression can fluctuate and just because he was able to contact ACAS on one day, does not mean that he was able to sufficiently focus to put together his claim and present it on another day. Given the claimant's depressive state of mind, compounded by back pain, I accept that he was not able to properly function around this time and therefore, it was not reasonably practicable to present his claim earlier.
33. The further time period of just short of four and a half months from the expiry of the limitation period was reasonable for the claimant to present his complaint in the circumstances of this case as reasoned above. Therefore, the tribunal extends time.

***3- Whether the further period was just and equitable.***

34. It was agreed at the hearing that the three month time limit for the discrimination claim should run from the date of the claimant's termination of employment; that is three months from 28 April 2021, being 27 July 2021. This is the same as for the unfair dismissal claim and so the complaint was just short of four and a half months out of time.
35. Whilst the respondent accepts that the health of the claimant will be considered by the tribunal, it repeats its submission that the claimant provided no evidence to support his health status. I refer to the foregoing discussion, and for the reasons already stated, I give substantial weight to the claimant's health conditions, which impacted on his ability to present his claim on time.
36. The respondent submits that the judgment failed to consider the very significant prejudice the respondent would suffer in having to defend a claim which it would otherwise not have to defend. Specifically it refers to the time and cost involved, and the fading of witness's memories.
37. Whilst the tribunal accepts that these matters would prejudice the defendant, the prejudice to the claimant would be far greater in losing the chance of bringing an arguable claim in the tribunal. Accordingly, the tribunal finds it just and equitable to

extend time.

**Conclusion**

38. Having reconsidered the evidence and having taken the correct limitation periods into account, the tribunal concludes that time should be extended both for the dismissal complaint and the discrimination complaint. Accordingly, it has jurisdiction to hear these complaints and the decision of 11 July 2022 is confirmed.

---

Employment Judge Liz Ord

Date 19 February 2023

JUDGMENT SENT TO THE PARTIES ON

.....

.....  
FOR THE TRIBUNAL OFFICE