



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Mr O Sener**

**Claimant**

AND

**London United Busways Limited**

**Respondent**

## JUDGMENT

Both parties have applied for a reconsideration of the Judgment sent to the parties on 7 March 2023.

The claimant's applications dated 13 March 2023 and, insofar as it amounts to such an application, 16 March 2023 are refused.

The respondent's application dated 13 March 2023 is refused.

## REASONS

1. The power to reconsider is contained in rule 70 of the Employment Tribunal Rules 2013:

'A Tribunal may, either on its own initiative ... 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.'

2. The power is not open-ended. It is limited not least by the need for finality in litigation. Also, the remedy should a Tribunal have made an error of law will usually be an appeal to the EAT. If fresh evidence has come to light, that will only usually warrant a reconsideration if the evidence could not have been obtained with reasonable diligence for use at the original hearing, it is relevant, apparently credible and would probably have had an important influence on the hearing.

3. The claimant's application(s)

4. There is no reasonable prospect of the original decision being varied or revoked because the application dated 13 March 2023 simply states that a reconsideration is required 'in the interests of justice'. This is not sufficient. The claimant also refers to requesting unredacted documents from the respondent under the Freedom of Information Act. That is a matter for the parties not the Tribunal.

5. In his email dated 16 March 2023 sent in reply to the respondent's reconsideration application, although the claimant does not expressly seek a reconsideration some of what he says could be interpreted as such. However, the matters he refers to are either matters that were fully considered at the original hearing, are requests to submit fresh evidence when he had every opportunity to do so at the hearing or are complaints about the documentation used at the hearing. The issues between the parties regarding documentation were fully aired and considered at the original hearing.

6. The respondent's application

7. The first ground of the application is that the Tribunal did not correctly identify a comparator in respect of the claimant's successful claim of disability related harassment. No comparator is required for a harassment claim.

8. The second broad ground, referred to in several places throughout the application and in different ways, is that the Tribunal failed to take into account the full circumstances of the case and in particular the nature and purpose of the controllers' role. These were matters raised in evidence and fully taken into account. It was the repeated references/queries by controllers (and the line manager when requesting an OH report) to the claimant's need for toilet breaks despite the respondent having already been notified of his medical condition that formed the basis of the harassment finding. The ibus reports were referred to not as acts of harassment in themselves but as evidence of conversations about toilet breaks having taken place.

9. The respondent is correct that the Tribunal found that there was no reference to toilet breaks at the interview on 8 January 2019 (para 97) yet it was referred to as part of the chronology of harassment (para 154). That was an error. However, given that only acts prior to 22 September 2018 were potentially out of time (para 2) and there were several ibus reports in October 2018 that indicated conversations had taken place with the claimant about toilet breaks which, taken together with the claimant telling OH in January 2019 that he felt targeted about toilet breaks and Mr Britto's acknowledgement in his letter dated 20 December 2018 that the claimant felt harassed, that error would not significantly impact the conclusions reached by the Tribunal.

10. Accordingly, there is no reasonable prospect of the original decision being varied or revoked.

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Employment Judge Andrews  
24 March 2023