



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Baah

**Respondent:** Ballymore Asset Management Ltd

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application dated **31 March** and the earlier letter of **13 March** for reconsideration of the liability judgment sent to the parties on **22 February 2023** is refused.

The judgment is confirmed.

## REASONS

The Tribunal conducted the liability hearing in this matter on 4, 5, 6, 10 and 11 January 2023. The Tribunal gave judgment for the Claimant in court, on 11 January 2023. The Claimant brought 14 allegations of direct race discrimination, victimisation and harassment. The Claimant succeeded in proving less favourable treatment on the grounds of race in 5 allegations, harassment in respect of all of those allegations and victimisation in relation to 2 additional allegations. The Tribunal conducted a remedy hearing in this matter on 31 March. Judgment was given in court and written reasons have now been provided in respect of the judgment, on the request of the Respondent.

On 13 March 2023, the Claimant submitted an application for reconsideration. The Tribunal wrote to the Claimant on 20 March to ask for explanation of the application. The Claimant wrote again on 31 March to provide clarification and to attach documents that he considered were relevant. The application was copied to the Respondent.

The Employment Tribunals Rules of Procedure 2013 provides at Rules 70 – 72, a process for reconsideration of judgments. Rule 70 in particular states that a judgment will only be reconsidered where it is *'necessary in the interests of justice to do so'*.

Having considered the Claimant's application, it is this Tribunal's judgment that there is no reasonable prospect of the original decision being varied or revoked, because:

1. The Claimant's application for reconsideration is on one point in this case. He applies for the judgment on allegation 9 (on page 41 of the bundle) to be reconsidered. This was the allegation that the Claimant was not allowed to have his preferred companion at the grievance hearing. This was a complaint of victimisation.
2. In order to succeed in that allegation, the Claimant would need to prove firstly, that Mr Walker told Mr Chandler that he could not attend the Claimant's grievance hearing with him as his companion and secondly, that Mr Walker did so because the Claimant had done a protected act. He would need to prove both points in order to succeed at a complaint of victimisation.
3. The Tribunal's judgment on this issue is set out at paragraphs 210 – 212 of the liability judgment.
4. It was this Tribunal's judgment that Mr Walker did not allow the ex-resident who accompanied the Claimant to attend the grievance hearing with him. The Respondent was only going to allow the Claimant to be accompanied by a trade union official or a colleague. As the ex-resident was neither of those, Mr Walker refused to allow that person to attend. It was our judgment that this was not an act of victimisation.
5. Mr Walker conducted both the Claimant's and his colleague, Ade Joshua's grievance hearings. We did not have evidence from which we could conclude that Mr Walker told Mr Chandler that he could not attend the Claimant's grievance hearing. At paragraph 211 of the liability judgment, the Tribunal stated that whether or not Mr Chandler wanted to accompany the Claimant and his colleague Ade to their grievance hearings, it was not our judgment that Mr Chandler was prevented from attending the grievance hearing because of the Claimant's protected act.
6. In his application for reconsideration, the Claimant has provided the Tribunal with new evidence which it did not have at the liability hearing. Attached to his letter dated 31 March was a letter dated 23 February to Mr Ade Joshua from Mr Andrew Asante, who heard his grievance appeal. Mr Joshua's grievance had also been heard by Mr Walker. In his decision on the grievance appeal, Mr Asante informed Mr Joshua that he was satisfied that he had been advised that his nominated colleague could not accompany him to the grievance hearing. This was in contravention of Mr Joshua's right to be accompanied. He told him that he would make sure that in future, the correct procedures surrounding grievance hearings is supplied to all parties involved.
7. The Claimant submits in his application for reconsideration that the outcome of Mr Joshua's grievance appeal proves that he was subjected to victimisation by Mr Walker as it proves that Terry Walker blocked Simon Chandler from attending his grievance hearing as he did to Mr Joshua.
8. In this Tribunal's judgment, this new evidence does not prove that point. Although he does not name Mr Walker in this letter, it is likely that Mr Asante's conclusion is that Mr Walker advised Mr Joshua that his chosen companion could not accompany him. This is not the same as happened to

the Claimant. The Claimant attended the grievance hearing with an ex-resident. That person was neither a trade union official nor a colleague. The Respondent was within its rights to refuse to have that person accompany the Claimant to the grievance hearing.

9. In our findings of fact, in the liability judgment, at paragraph 75, we found that Mr Chandler told the Claimant that Mr Walker had told him that he could not attend to accompany the Claimant. In the hearing, Mr Walker could not recall saying so. The Tribunal stated at paragraph 121 that it found Mr Walker to be a credible witness. We did not have evidence from Mr Chandler on this issue. He provided a statement to Mr Walker as part of the grievance investigation. He did not refer to this issue in that statement. The Claimant was able to produce a number of statements from colleagues and clients to support his case, but he did not have a statement from Mr Chandler about this.
10. The Claimant did not say to us in evidence that he asked Mr Walker to allow Mr Chandler to accompany him and that Mr Walker refused. What happened was that Mr Chandler told the Claimant that he had been told by Mr Walker that he could not attend the hearing. This is different to what is recorded in Mr Asante's letter in relation to Mr Joshua. The letter states that Mr Joshua was told directly that his companion of choice, who the Claimant says is Mr Chandler, was not allowed to attend. The letter does not state the name of Mr Joshua's chosen companion.
11. Lastly, we also found, as set out in paragraph 75 of the liability judgment, that Mr Walker told the Claimant that he was prepared to re-arrange the hearing so that the Claimant's companion, whether Mr Chandler or another colleague, could attend. It was the Claimant's decision to carry on with the meeting. The Claimant therefore had the opportunity to arrange a new date so that he could get Mr Chandler or another colleague to accompany him but chose to go ahead on the day.
12. After careful consideration of the letter, it is the unanimous judgment of this Tribunal that Mr Walker did not deny the Claimant the right to be accompanied. The Claimant's situation appears to be different from Mr Joshua. Also, there was no facts from which we could conclude that even if he did so, that it was because the Claimant had done a protected act. There was no evidence that Mr Walker took any action against the Claimant because he had raised a grievance or because he made an allegation of discrimination.
13. In those circumstances, it is this Tribunal's judgment, having carefully considered the Claimant's application for reconsideration and the new document, that there are no grounds to reconsider the judgment. It is this Tribunal's judgment to confirm the liability judgment.
14. There is nothing in the Claimant's application for reconsideration that in the interests of justice, would require this decision to be reviewed or changed.
15. The Claimant's application for reconsideration of the Tribunal's judgment dated 11 January 2023, the written reasons for which were sent to the parties on 22 February 2023, is refused for the reasons stated above, under

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Rules 70 and 72 of the Employment Tribunals Rules 2013. The judgment promulgated to the parties on 22 February 2023 is confirmed.

**Employment Judge Jones**

**Date: 8 May 2023**