



# EMPLOYMENT TRIBUNALS

**Claimant:** Rynhardt Mannel

**Respondent:** Selene Marine

## JUDGMENT FOLLOWING RECONSIDERATION

The claimant's application dated **27 February 2023** for reconsideration of the judgment sent to the parties on 15 February 2023 (written reasons sent on 6 April 2023) is refused because there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

1. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contain the Employment Tribunal Rules of Procedure 2013 (ET Rules). Rule 71 of the ET Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The application for reconsideration of the judgment sent to the parties on the 15/2/23 is in time.
2. Rule 72 (1) of the ET Rules provides: "An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused, and the Tribunal shall inform the parties of the refusal. ..."
3. Under rule 70 of the Employment Tribunal Rules of Procedure 2013, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'.
4. The application for reconsideration dated 27 February 2023 is made on the following grounds:
  - a. The Judge erred in not drawing a clear distinction between the net and gross amounts of monies due.
  - b. The Judge erred in disregarding the documentary proof of my claims when she dismissed certain claims related to my entitled holiday pay, remuneration and disbursements as per our employment contract.
  - c. The Judge erred in considering the counterclaim.

5. I have additionally considered all the points made in an email titled "Omitted issues due to extended day for order" dated 25 January 2023 (before Judgment was sent to the parties) and forwarded to me on 22 February 2023.
6. The hearing was held over three days and the claimant, who represented himself participated fully in the hearing, providing information, documents, asking questions and providing written submissions. He had the opportunity to ask questions of the respondent's witness and advance all arguments that he wanted.
7. There was a lengthy and comprehensive discussion with both parties at the beginning of the hearing. I checked the documents that I should have, and these are set out at paragraph 4 of the written reasons dated 6 April 2023. I took time before the hearing started to read the documents I was directed to by both parties. On 24 January 2023, after the evidence had been completed, the claimant sent in additional documents attached to his written submissions.
8. The issues, including the counterclaim, were explored at the commencement of the first day of the hearing, and areas of agreement identified as set out in the written reasons dated 6 April 2023 at paragraphs 7-14.

The Judge erred in not drawing a clear distinction between the net and gross amounts of monies due.

9. The judgment sets out clearly both the gross and net amounts which are owed to the claimant with the net amounts being grossed up to ensure that the claimant receives the correct amount that he is entitled to. This is explained at paragraphs 52-53 of the written reasons dated 6 April 2023. The judgement further sets out that any deductions which are due for tax and national insurance contributions are the responsibility of the respondent.

The Judge erred in disregarding the documentary proof of my claims when she dismissed certain claims related to my entitled holiday pay, remuneration and disbursements as per our employment contract.

10. Full account was taken of the documents to which I was referred by both parties, the evidence of both parties and submissions of both parties. I reached findings on this evidence and gave detailed reasons which are set out at paragraphs 25-27, 35-37 and 39-42 of the written reasons dated 6 April 2023.
11. Paragraphs 25-27 deal with the evidence presented in respect of the December 2020 overtime and considers in detail the evidence presented and reason given, by the claimant, for the failure to provide the relevant time sheet.

12. Paragraphs 35-37 deal with the holiday trade agreement and considers in detail both the claimant's evidence and documents to which I was referred including emails and timesheets.
13. Paragraphs 39-42 deal with the outstanding hotel expenses including the additional evidence submitted on 24 January 2023 after evidence had finished. The claimant accepted at the hearing that one reading of the email at page 48 of the claimant's bundle, which set out the total amount of expenses claimed by the claimant could be interpreted as including the hotel expenses.

#### The Judge erred in considering the counterclaim

14. In the ET1, the claimant brought a breach of contract claim in respect of wages not paid or not paid in full, notice pay and unpaid expenses. In response the respondent raised a counter claim stating that the claimant has not worked pursuant to his contract and is holding office equipment worth £20,000. Additionally, the respondent claimed for training expenses of £5237.03 and £8000 for inability to perform their day-to-day work.
15. The claimant in an addendum response to the counterclaim dated 13 November 2022 denied owing the respondent for training costs of £5237.03. He did not dispute that he had retained equipment belonging to the respondent or the said value of those goods. During evidence the claimant said that he had a further £4000 worth of equipment in a cupboard downstairs in his home.
16. The claimant has attached a document, Annex A, with his application for reconsideration which he has described as being "some proof of the estimated value of the goods I had". This document has been prepared by the claimant and gives a valuation of the equipment of £18670.00 and includes best estimates for the valuation of some goods and valuations taken from various different sources. I have carefully considered whether this document is new evidence such as to justify in the interests of justice reconsidering the value of the counterclaim.
17. I find that this document does not justify a reconsideration of the value of the counterclaim. The original estimated value of £20,000 was never disputed by the claimant. The sum of £4000 was added on the claimant's evidence. The issue, at the hearing, was the current valuation of the goods and an agreed process for this to be quantified was set out in the written reasons dated 6 April at paragraphs 58-59 which provides for an independent valuation.

#### Conclusion

18. In reaching my decision I have kept in mind that under Rule 70 the Employment Tribunal has a broad discretion. In Outasight VB Ltd v Brown 2015 ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows employment tribunals

a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised 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'.

19. That finality in litigation is a central aspect of the interests of justice was also referred to in *Ebury Partners Ltd v Acton Davis 2023 EAT 40* where the EAT stated that it is unusual for a litigant to be given a 'second bite at the cherry' and the jurisdiction to reconsider should be exercised by employment tribunals with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the Employment Tribunal after the parties have had a fair opportunity to present their cases on a relevant issue.
20. I have carefully considered the claimant's application and applying the relevant legal principles I refuse the application for reconsideration pursuant to Rule 72 because there is no reasonable prospect of the Judgment being varied or revoked. There is nothing in the claimant's application for reconsideration that in the interests of justice requires this decision to be changed or reviewed. The judgment sent to the parties on 15 February 2023 is confirmed.

**Employment Judge F Allen**  
**Date: 8 May 2023**