



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Lightfoot-Webber

**First Respondent:** Lawcommercial Trading Ltd t/a Lawcomm Solicitors

**Second Respondent:** Lawcommercial Services Limited

## JUDGMENT

The Respondent's application dated **13 April 2023** for reconsideration of the judgment sent to the parties on **30 March 2023** is refused because there is no reasonable prospect of the decision being varied or revoked.

## REASONS

1. By a claim form presented on 10 September 2022 the Claimant claimed constructive unfair dismissal, made a claim for unlawful deduction from wages in relation to a bonus payment and a claim for a failure to provide a statement of terms of employment. The claim was heard on 21 and 22 February 2023.
2. In a reserved judgement sent to the parties on 30 March 2023, I determined as follows:
  - a. the Claimant's claim for unlawful deduction from wages was out of time and the Tribunal had no jurisdiction to hear the claim. It was dismissed;
  - b. the Claimant's claims for breach of contract in relation to the Q1 2022 bonus and constructive unfair dismissal were upheld against the First Respondent; and
  - c. all claims against the Second Respondent were dismissed.
3. The First Respondent now applies for a reconsideration of that Judgment. The grounds are set out in the First Respondent's email of 13 April 2023. In summary, the grounds are that:
  - a. the Tribunal did not take into account that the payment of the Q1 2022 bonus could be withheld in circumstances where there had been a

breach of practice rules, justified complaints, breach of employment contract or staff handbook, submission of notice or a failure to comply with the firm's quality standards. The Tribunal should have taken account of evidence that the Claimants breaching the firm's rules in the office manual on submission of bills, justified complaints from clients resulting in amounts being written off and the Claimant permitting excessive debtors on her files. It is not accepted that this point was not made in submissions; and

- b. the Tribunal did not consider that the e-mail offering the Claimant a directorship was "subject to contract".
4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
5. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.
7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

*"34. [...] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.*

*35. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."*
8. The First Respondent's application was received within the relevant time limit.

I therefore consider it under Rule 72.

9. In relation to the Q1 2022 bonus, the First Respondent pleaded in its Grounds of Resistance at paragraphs 20 to 26 that the bonus was not payable because it was discretionary in nature and the basis of calculation had been amended so as to relate to a “cash received” basis, rather than upon an “invoices delivered” basis. The matters now raised at reconsideration stage were not referred as part of the First Respondent’s pleadings in relation to the Q1 2022 bonus. There was no application to amend the Grounds of Resistance to include these points.
10. It is accepted that these points regarding the Q1 2022 were referred to in submissions, and that this was incorrectly recorded in the judgment, but the Claimant’s representative objected at the time due to the fact that these matters were not referred to in the Grounds of Resistance. Having considered the reconsideration request, since these points were not pleaded by the First Respondent, and the First Respondent had not sought to amend those pleadings, the Tribunal would not have reached a different conclusion.
11. At paragraphs 57 and 58 of the judgment I made a finding of fact that the offer of directorship set out in Mr Dhariwal’s email dated 12 April 2021 with the heading “Final Offer (STC)” became a term of the Claimant’s contract, once she sent an email accepting it. This also had the effect of withdrawing her previous resignation. The Tribunal, in making this finding of fact, took into account the fact that the email was headed “STC”, meaning “subject to contract”. It is therefore not appropriate to reconsider a factor which has already been taken into account and determined by the Tribunal.
12. Having carefully considered the First Respondent’s application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

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**Employment Judge Volkmer**  
**Date: 3 May 2023**

JUDGMENT SENT TO THE PARTIES ON  
12 May 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE