



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr AM Choudhry

**Respondent:** DL Insurance Services Ltd

## JUDGMENT

The claimant's application dated **4 January 2023** for reconsideration of the Reserved Judgment on Costs dated **20 December 2022** and sent to the parties on **21 December 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

The stay on enforcement of that costs judgment is lifted.

## REASONS

1. By an email dated 4 January 2023 the claimant applied for reconsideration of the reserved costs judgment dated 20 December 2022 sent to the parties in writing on 21 December 2022 ("the Costs Judgment"). In these reasons I refer to that email of 4 January 2023 as "the Application".
2. On 9 February 2023 the respondent consented to a stay of the costs judgment for 3 months pending my decision on the reconsideration application.
3. I considered the Application in chambers on 17 February 2023.
4. On 16 March 2023, before this judgment had been finalised and sent to the parties, the claimant applied under rule 50 of the Employment Tribunal Rules of Procedure 2013 ("the ET Rules") for an anonymity order, i.e. for his name to be redacted in the judgments published online relating to the case.
5. I directed that the respondent provide its comments on that application and have today given further directions in relation to it.

### Relevant Law

6. An employment tribunal has a power to reconsider a judgment “where it is necessary in the interests of justice”. On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the ET Rules).
7. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties or within 14 days of the date that written reasons were sent (if later). It must be copied to the other party (rule 71 of the ET Rules).
8. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET Rules). If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).
9. The “interests of justice” allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the 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 (**Outsight VB Ltd v Brown [2015] ICR D11, EAT para 33**).
10. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

“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 by 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.”
11. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the “interests of justice”. That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the original hearing
  - that the evidence is relevant and would probably have had an important influence on the hearing; and
  - that the evidence is apparently credible.
12. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outsight** at paras 49-50).

### **The claimant's reconsideration application**

13. The claimant's application for reconsideration challenged the Tribunal's finding of fact that he did not have covid when he claimed to have. I find it is an attempt to re-argue the case that the Tribunal heard on 22 September 2022.
14. The claimant with his reconsideration application submitted documents not previously placed before the Tribunal. They included evidence of a doctor's appointment on 14 April 2021 and a screenshot of a takeaway ordered on 9 April 2021. The claimant said that the takeaway could have been the likely cause of the symptoms he experienced at the weekend. That was not an argument he raised at the costs hearing though he would clearly have been aware of it. He also included documents relating to the steps to be taken by a person with COVID symptoms. These were said to be relevant to which kind of COVID test the claimant was required to undertake (and where he could take it) when he believed he was symptomatic.
15. I find that all these were documents which the claimant clearly had (or could have easily acquired) prior to the hearing on 22 September 2022. They were either in his possession, on his phone or were publicly available documents. They were clearly potentially relevant given that the claimant was well aware that the basis of the respondent's application for costs was that he misled the Tribunal by saying he had COVID when he did not.
16. Applying the approach in **Ladd v Marshall**, I find that while the evidence might potentially be relevant there is no explanation as to why it could not have been obtained with reasonable diligence for use at the original hearing. In those circumstances I do not consider that that new evidence should be allowed, nor do I find that the application for reconsideration based on it should be allowed. The importance of finality in litigation means that the claimant should not be given a "second bite at the cherry" by adducing now evidence which he could have put before the Tribunal at the costs hearing but chose not to.
17. When it comes to the other points made by the claimant in his reconsideration application, I find that these simply repeat points made at the costs hearing and which were taken into account in making our

decision. It is not in the interests of justice to allow reconsideration in relation to those matters.

18. That also applies to the points made by the claimant in relation to house equity. He submits that using Zoopla is not a fair or accurate reflection of property prices. That is relevant to our finding that the equity in the claimant's property was greater than the £20,000 that had been claimed by the respondent in costs, so that the claimant had means to satisfy the costs amount awarded. The claimant suggests that further documentation could be obtained to show the actual equity. He has not taken steps to obtain those documents. In any event, on his own case the equity in his property is in the region of £18,000 which is well in excess of the amount that we awarded by way of costs.
19. In the circumstances, I find there is no reasonable prospect of the claimant showing that it is in the interests of justice to reconsider the Costs Judgment. The application for reconsideration is refused.

Stay of judgment

20. The Tribunal has been notified that the claimant has appealed against the Costs Judgment. The respondent's consent to a stay of the Costs Judgment was to allow reconsideration of that judgment. That stay is now lifted. The claimant will need to make a further application if he wishes the Costs Judgment to be stayed pending the outcome of his appeal.

Employment Judge McDonald  
Date: 13 June 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
16 June 2023

FOR THE TRIBUNAL OFFICE