



**THE EMPLOYMENT TRIBUNAL**

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE TRUSCOTT KC  
Ms S Goldthorpe  
Mr A Brown

**BETWEEN:**

Mrs A S I Hunt

Claimant

AND

- (1) Gorj Gillingham Limited in voluntary liquidation
- (2) Rose Beauty Bar Limited

Respondent

**JUDGMENT upon RECONSIDERATION**

1. The Tribunal grants the application for reconsideration of the Tribunal's judgment dated 27 February 2023.

2. The Judgment of the Tribunal is varied so that the second respondent is ordered to pay:

The statutory maternity pay of	£635.30.
Unpaid notice pay less statutory maternity pay of	£292.60.
Unpaid holiday pay	£1815.73.
Basic award	£595.00
Compensatory award	£605.14
<b>TOTAL AWARD</b>	<b>£3943.77</b>

## REASONS

1. By way of a letter dated 14 March 2023, the respondent made an application for a reconsideration of the decision and reasons of this Tribunal dated 27 February 2023. By letter dated 17 March 2023, the claimant also sought a reconsideration of the judgment so far as related to the calculation of holiday pay.
2. Any application for the reconsideration of a judgment must be determined in accordance rules 70 to 74 of the Employment Tribunal Rules of Procedure 2013.

### Rules

3. The relevant Employment Tribunal rules for this application read as follows:  
RECONSIDERATION OF JUDGMENTS

#### Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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.

#### Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

#### Process

72.— (1) 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. Otherwise, the Tribunal shall send a notice to the parties setting 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. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional

Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

4. In accordance with rule 70, a Tribunal may reconsider any judgment “*where it is necessary in the interests of justice to do so*”. On reconsideration, the decision may be confirmed, varied or revoked. If it is revoked, it may be taken again.

5. The case authorities remind Tribunals that there is no automatic entitlement to reconsideration for any unsuccessful party. On the contrary, there is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Reconsideration of a judgment should be regarded as very much the exception to the general rule that Tribunal decisions should not be reopened and relitigated. In reference to the antecedent review provisions, in **Stevenson v. Golden Wonder Ltd** [1977] IRLR 474 EAT, Lord McDonald said that the (exceptional) process was ‘*not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before*’.

6. When dealing with the question of reconsideration, a Tribunal must seek to give effect to the overriding objective to deal with cases ‘fairly and justly’. The Tribunal should also be guided by the common law principles of natural justice and fairness. Her Honour Judge Eady QC (as she then was) gave guidance as to the approach to be taken in **Outasight VB Ltd v. Brown** [2015] ICR D11 EAT. Although a tribunal’s discretion can be broad, it 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*”.

7. Earlier guidance as to the approach of Tribunals to the matter of reconsideration remains equally pertinent. In **Trimble v. Supertravel Ltd** [1982] ICR 440, the EAT made the following observations:

7.1. it is irrelevant whether a tribunal’s alleged error is major or minor;

7.2. what is relevant is whether or not a decision has been reached after a procedural mishap;

7.3. since, in that case, the tribunal had reached its decision on the point in issue without hearing representations, it would have been appropriate for it to hear argument and to grant the review if satisfied that it had gone wrong;

7.4. if a matter has been ventilated and properly argued, then any error of law falls to be corrected on appeal and not by review.

8. This Tribunal decided that it was appropriate to reconsider its assessment of holiday pay contained in the judgment for the reasons given by both parties. The Tribunal asked for any additional written submissions by 11 April 2023. Both parties provided additional submissions. The respondent also sought to amend its application for reconsideration which the Tribunal granted.

9. The respondent says that it is not open to the claimant to claim holiday pay for the period 2019/2020 of which part was paid. It says that as holidays were not taken, the entitlement to payment was lost. It was submitted that this was a new claim but it has been part of her claim since near the end of her employment with the first respondent. In her letter to the first respondent dated 2 October 2020 [103], the claimant sets out her claim for accumulated holiday pay which is not disputed by the first respondent in its reply. The claimant repeated her claim for holiday pay in her ET1 which the first respondent disputed in amended grounds of resistance at paragraph 30 by saying they were not carried over [57] whilst acknowledging some liability in paragraph 29. The claimant's calculation of the holiday due to her is detailed and reasoned in her schedule of loss [77-78]. One of the issues identified for the main hearing was whether holiday entitlement was carried over [72-73]. The contract of employment is silent on the matter [93]. The second respondent was in no position to provide any further elucidation. The Tribunal awarded the claimant what she claimed as it found her evidence credible and reliable and was satisfied that the holiday pay accumulated, was carried over and which she did not receive. It did not seek to compensate the claimant for sums she had already received.

10. The respondent says that holiday pay should only be awarded to the effective date of termination. Whilst this is correct, it means that the claimant has lost holiday pay for the period 22 November 2020 to 14 December 2020, accordingly the amount of £105.14 is removed from the previous holiday pay calculation and is added in the compensatory award making no difference to the overall award to the claimant.

11. The award for the period 24 June 2018 to 23 June 2019 is £506.02. For the period 24 June 2019 to 23 June 2020, taking into account the sum paid by the respondent, there remains outstanding £616. For the period 24 June 2020 to 22 November 2020 the award is £693.71. Total for holiday pay is £1815.73. Total award is £3943.77.

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**I D Truscott KC Employment Judge**

**Date: 2 May 2023**