



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr A Hine

v

**Respondent:**

Tesco Stores Limited

**Heard at:**

Reading

**On:** 20, 21, 22, 23 and 24

February 2023

**Before:**

Employment Judge Hawksworth

Mr J Appleton

Mr A Kapur

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms R Barrett (counsel)

## JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the reserved judgment of the tribunal sent to the parties on 10 May 2023 is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

## REASONS

### Introduction

1. Reserved judgment and reasons in the claimant's claim against the respondent were sent to the parties on 10 May 2023.
2. The claimant made an application on 22 May 2023 for reconsideration of the judgment. I have considered the application under rule 72(1).

### The rules on reconsideration

3. Rule 70 of the Employment Tribunal Rules of Procedure 2016 says:

*“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.”*

4. The requirement that a judgment may only be reconsidered where reconsideration is necessary in the interests of justice reflects the public interest in the finality of litigation.
5. Rule 71 says that an application for reconsideration must be made in writing within 14 days of the date on which the original decision was sent to the parties. Rule 72 explains the process to be followed on an application for reconsideration under rule 71. It says:

*“(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.”*

## Conclusions on the claimant's application

6. The claimant's application for reconsideration was made within the required 14 days of the date on which the reserved judgment and reasons was sent to the parties. The claimant complied with rule 71 in respect of the reserved judgment.
7. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I need to decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. I have considered the claimant's application with this test in mind.
8. I explain below my conclusions on the issues raised by the claimant in his application as I understand them. For the reasons explained below, I have concluded that the application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
9. Written reasons: the claimant requests written reasons of the decision on the whistleblowing complaint. These have already been provided in the reserved judgment and reasons sent to the parties on 10 May 2022, paragraphs 120 to 150 in particular.
10. Data protection:
  - 10.1 The claimant requests written reasons for the failure of this claim. Written reasons have already been provided.
  - 10.2 The claimant says that detriments under the Data Protection Act are not apparent in the reserved judgment. At paragraphs 132 to 145 of the reserved judgment and reasons, we explained why we had decided that the way in which the respondent dealt with the claimant's data protection complaint was not an unlawful detriment done on the ground that he had made a protected disclosure.
  - 10.3 As we explained at the hearing, the tribunal does not have the power to decide and award compensation for data protection breaches. The Data Protection Act is a matter for the Information Commissioner and/or the civil courts.
11. Protected disclosures: the claimant says that he believes that section 43(f) – evidential concealment – applies in his case. I understand this to be a reference to section 43B(1)(f) of the Employment Rights Act 1996. Section 43B sets out the rules to be applied when considering whether a protected disclosure has been made. I understand that the claimant is saying that one of his disclosures was a qualifying/protected disclosure by reference to sub-section (1)(f). The tribunal considered the disclosures identified by the claimant as alleged protected disclosures in the list of issues (the

reserved judgment explains how this list was prepared). The tribunal found that the claimant made five protected disclosures. However, it also found that these protected disclosures did not materially influence any of the alleged detrimental treatment of the claimant, and were not the reason or the principal reason for his dismissal.

12. Full hearing: the claimant says that the whistleblowing case did not get a full hearing on the Friday (day 5 of the hearing). All the claimant's complaints were considered in full at the hearing. The witness evidence was completed by the end of Thursday (day 4), and the parties made closing remarks on Friday morning. The remainder of the day on Friday was for tribunal deliberation time.
13. Further evidence: the claimant asks for more time to submit further evidence. He has not explained why he wants to produce further evidence at this time, that is after the hearing has finished and judgment has been given. The time to produce evidence is before the hearing, as provided for in the case management orders made by EJ Vowles on 14 January 2022. There is a public interest in the finality of litigation, that is the requirement that disputes should be brought to a proper close rather than running on or being reopened. In order to justify reconsideration on the ground of new evidence, it is necessary to show that the evidence could not with reasonable diligence have been obtained 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. The claimant does not say how these tests are met.
14. Tribunal's findings of fact: the claimant does not agree with the tribunal's findings of fact in point 24 of the reserved judgment and reasons. These findings were made at the hearing after the tribunal heard and weighed up the evidence, considered submissions by the parties, made findings of fact on the balance of probabilities, applied the law and reached conclusions. The tribunal's findings of fact and conclusions were explained in detail in the reserved judgment and reasons. None of the claimant's assertions about the evidence or about the tribunal's conclusions provide a basis for reconsideration of the judgment.
15. The nature of the dismissal: the claimant says that the nature of the dismissal, including the deliberate neglect of data rights, brings the dismissal within section 103A of the Employment Rights Act 1996. A dismissal is unlawful under section 103A where the reason or the principal reason for the dismissal is a protected disclosure made by the claimant. In the claimant's case, we found that the reason for the dismissal was the claimant's conduct on 3 August 2020, not any protected disclosure he made. We explained this in paragraphs 62 and 146 to 150 of the reserved judgment and reasons.

16. If the claimant considers that there is a mistake in the tribunal's judgment on a point of law, it is open to him to pursue an appeal to the Employment Appeal Tribunal. That is not something which it would be appropriate to consider as part of a reconsideration. Information about appealing to the Employment Appeal Tribunal was included in the letter sent to the parties by the tribunal on 10 May 2023.

Summary

17. There must be some basis for reconsideration; the process is not an opportunity for a party to provide further evidence or to seek to reopen matters which the tribunal has determined.
18. I have carefully considered the claimant's application and, for the reasons set out above, I have concluded that there is no reasonable prospect of variation or revocation of the original decision. The application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
19. The claimant's application for reconsideration is therefore refused under rule 72(1).

---

**Employment Judge Hawksworth**

Date: 22 June 2023

Reasons sent to the parties on

25 June 2023

GDJ

For the Tribunal office