



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Bedeau

**Respondent:** The Co-Operative Group

## RECONSIDERATION JUDGMENT

The Claimant's application dated 10 March 2023 for reconsideration of the Judgment sent to the parties on 24 February 2023 is refused.

### REASONS

1. The Claimant's reconsideration consists of six pages. In summary, he states that the Judgment requires reconsideration because of:

- (a) Clear mistakes of fact
- (b) The manner in which "reasonableness" has been used as a criterion for establishing facts.
- (c) Unwarranted bias towards the Respondent and against the Claimant.
- (d) The treatment of the Respondent's defence as presented in its Grounds of Resistance.

2. It is not necessary or proportionate to provide a response to each of the Claimant's comments in turn. The reconsideration process is not an appropriate forum for a line-by-line debate about the merits of the Tribunal's Reasons, or for the Claimant to reargue the case. Rather it is an opportunity for the Claimant to persuade the Tribunal that there is an error in the reasoning such that the outcome should arguably be varied or revoked.

*(a) Mistakes of Fact*

3. As may be seen from the length of the Reasons and the number of issues, this was a factually dense claim. There were very many disputes of fact, often over small details, and not all were relevant to the issues to be decided. The Tribunal made only those findings of fact which were necessary to decide the issues and claims before it.

4. Dealing with paragraphs 1.1.1.1 and 1.1.1.2: The Claimant's complaint in the application for reconsideration appears to be that the Tribunal should have found as a fact whether or not his Team Manager was available on each occasion when another Team Manager dealt with him. He does not identify the particular issues where he asserts this was relevant. In any event, the Tribunal found as a fact (paragraph 12) that on a day-to-day basis Team Managers "would on occasion manage other drivers, *for example* if their own Team Manager was absent".

5. The identity of the Team Manager dealing with a particular issue was addressed where relevant to the Claimant's case (see for example at paragraphs 130, 147 and 262). As the Tribunal made clear in its conclusions, the Claimant was taking an extremely rigid view of process and alleging that any departure was an act of discrimination or victimisation. The Tribunal did not agree. Other than where specifically dealt with, the identity of the Team Manager and whether any other Team Manager was not available was not material to the issues.

6. As for paragraph 1.1.1.3, the Tribunal found as a fact that shifts differed in length (paragraph 14). The Claimant does not identify to which issue the length of a shift is relevant, but it was dealt with in issue 1.5 where the Tribunal found that even on the Claimant's case he had left work over an hour and a half early on 11 November 2017.

7. The differences between the NTA and the findings at paragraph 15 of the Reasons are not set out in the application for reconsideration. Insofar as the reporting of defects was concerned, this was fully dealt with to the extent required in the issues where it arose, such as the initial incident on 25 April 2017 and subsequent issues with defects on 12 April 2019, 18 December 2019 and 23 December 2019.

8. The date of the Claimant's election as a trade union representative is not material. Whether early 2017 or October 2017, the relevance of the Claimant's trade union role was dealt with to the extent necessary to decide the relevant issues (1.4 to 1.6; 1.9, 1.10). There was no issue before the Tribunal as to whether Mr Horsfall had sent an unreasonable email as a result of him finding out that the Claimant had been elected as a trade union representative.

9. The mistakes of fact which are asserted by the Claimant are not materially relevant to the conclusions reached by the Tribunal.

10. Paragraphs 1.4 and 1.5 of the application for reconsideration amount to an attempt to challenge factual findings by disputing the Tribunal's assessment of the

evidence to which it was taken during the hearing. No further factual findings are necessary based on the points made in relation to these paragraphs. It is not appropriate for the reconsideration process to be used to reargue the Claimant's factual case in an attempt to achieve more favourable factual findings. All factual findings were supported by evidence and were open to the Tribunal to make.

*(b) Use of reasonableness as a criterion for establishing facts*

11. In deciding the constructive dismissal claim, it was necessary to decide whether the Respondent acted without reasonable and proper cause in a manner calculated or likely to destroy or seriously damage the implied term of trust and confidence (paragraph 202). For the Equality Act claims, it applied the legal tests as set out at paragraph 206 (but more fully explained in the law section, see in particular paragraphs 196 and 199). It is a matter for the EAT to decide whether these were misdirections of law or whether the Tribunal failed to apply the same in reaching its conclusions.

12. To the extent that the Claimant takes issue with the findings of fact as to reasonableness, and for the reasons set out above, it is not appropriate for the reconsideration process to be used to reargue the Claimant's factual case in an attempt to achieve more favourable factual findings. All factual findings were supported by evidence and were open to the Tribunal to make.

13. As for paragraph 2.1.4 of the reconsideration, it is accepted that paragraph 41 of the Reasons may be read in a way which would give the impression that the Tribunal found that there was no discussion in the canteen at all. The finding of fact was that there was no discussion in the canteen in which the Claimant told Mr Rymer that the grievance was about Mr Horsfall, not that there was no discussion in the canteen at all.

14. The Tribunal made findings of fact as to whether the Respondent was acting reasonably or not (and indeed the same for the Claimant) insofar as necessary to decide the issues and based upon the evidence, for the reasons given and not based upon any assumption. Insofar as the Claimant asserts bias or an erroneous method of proceeding, it will be for the EAT to decide whether his complaints are well founded.

*(c) Bias*

15. The difficulties in agreeing a bundle are recorded in summary at paragraphs 8 to 11 of the Reasons. Earlier case management orders are not the subject of this application for reconsideration. The Claimant has not identified any particular diary note said to corroborate any particular piece of other evidence in any material dispute of fact where the Tribunal accepted the Respondent's evidence over his. The Claimant's diary notes were admitted in evidence and given the weight which the Tribunal considered appropriate for the reasons given.

16. The submissions of the Claimant in paragraphs 3.2 and 3.3 of the application are an attempt to reargue the Claimant's factual case in an attempt to

achieve more favourable factual findings. All factual findings were supported by evidence and were open to the Tribunal to make. The Tribunal explained to the Claimant during the hearing, and as recorded at paragraph 343) explained that it was not the role of the Tribunal to look in the bundle for evidence which would support his claims but instead to look at evidence brought to our attention by the parties. The National Transport Agreement was referred to only expressly in connection with training and development for drivers and the length of a shift for the purposes of undertaking trade union duties (in the context of the factual dispute about whether the Claimant should have spoken to Mr Horsfall before sending his email on 22 March 2018 (paragraphs 50 to 52 and 227 and 228). Neither was material for the reasons given.

17. The standard of proof in the Employment Tribunal is the balance of probabilities, not “beyond reasonable doubt” as the Claimant states in paragraph 3.2.1. The Tribunal is well used to hearing cases in which litigants represent themselves and provided practical assistance wherever it could (as recorded at paragraph 9 of the Reasons).

18. As for paragraphs 3.3, 3.4 and 3.5, the findings of Ms Akram were not part of the issues to be decided and they are dealt with to the extent relevant at paragraphs 175 to 177 and paragraph 268). The Tribunal’s findings of fact about the “mistakes” which the Claimant asserts are referred to 20 times in the Judgment are for the reasons given.

19. Whether a manager is upset by a protected act is not the correct legal test, it is whether the employee is subjected to a detriment because of a protected act. At paragraph 291 is that the relevance of the protected act was that managers were less likely, not more likely, to challenge the Claimant’s behaviour. This is not a detriment. As for Mr Lewington, the Tribunal gave such weight as was appropriate to his contemporaneous communications. This is a finding of fact for the Tribunal.

20. The Claimant may disagree with the Tribunal’s findings of fact and conclusions but reconsideration is not a process for a party to re-argue points which have not been accepted or indeed for the Tribunal to enter into further debate or justification for the Reasons already fully given.

*(d) Defence/GORs*

21. The Claimant has not particularised the precise inconsistencies in the Respondent’s Grounds of Resistance in his application for reconsideration. Any inconsistency was considered to the extent that it was brought to the attention of the Tribunal in evidence or submissions. The contents of the folder have been dealt with in the Reasons.

*Conclusion*

22. Whilst it is regrettable that the Claimant is unhappy with the Judgment and the Reasons, his application for reconsideration seeks to have factual issues re-

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3201936/2020; 3200105/2021 & 3205325/2021**

examined in the hope of obtaining a different outcome. It does not set out anything which renders it necessary in the interests of justice to reconsider the Judgment as there is no reasonable prospect of the original decision being varied or revoked.

**Employment Judge Russell  
Dated: 30 June 2023**