



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Jonathan Davies

**Respondent:** Harold Davies and Partners Ltd

**HELD AT:** Manchester

**ON:** 9 January, 30  
January, 6 March & 13  
April 2023 (in  
chambers)

**BEFORE:** Employment Judge Ficklin

## JUDGMENT ON RECONSIDERATION

The respondent's application for reconsideration of the award for unpaid wages received 24 April 2023 is granted. It is not necessary to hold a hearing to consider the application.

## REASONS

### Introduction

1. I begin with an apology for the delay in this reconsideration. I received notification of the reconsideration application on 25 July 2023, two days before I was away on leave for effectively all of August. I understand the parties would expect it to be addressed sooner.
2. In a judgment sent to the parties on 24 April 2023, I found that the claimant's claims were well-founded, including his claim for unpaid wages, and awarded him a total of £44,745.01.
3. The respondent sought reconsideration only of the award for unpaid wages on the basis that my judgment did not take into account that the minimum wage for part of the two-year period prior to my judgment was lower than the amount I used in my calculations. I agree and give reasons and a recalculation below.

### The rules on reconsideration

4. 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."
5. 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. 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.

6. 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 respondent’s application**

7. In my judgment I found that the claimant had been underpaid in the relevant period (ie between 16 September 2020 and 15 September 2022, the date of claim). I calculated that he was underpaid in that period with reference to the National Living Wage (NLW) and the Agricultural Wages (England and Wales) Order 2012 (AWO). For the purposes of this reconsideration, only the NLW is relevant.
8. The respondent sought reconsideration on the basis that I had erred in calculating the claimant’s arrears of wages with reference to the NLW as £9.50 for the entire two-year period. That is correct; using £9.50 for the entire relevant period was an error. I recalculate the arrears of wages with reference to the

correct NLW for the financial years 2020-2021 and 2021-2022 below. The overtime calculation and other findings are unaffected.

9. The relevant period (ie between 16 September 2020 and 15 September 2022, the date of claim), encompasses three rates of the NLW. There are 28 weeks for 2020-2021 (ie 16 September 2020 to 31 March 2021); 52 weeks for 2021-2022 (ie 1 April 2021 to 31 March 2022; and 24 weeks for 2022-2023 (ie 1 April 2022 to 15 September 2023).
10. The NLW for 2020-2021 was £8.72; for 2021-2022 it was £8.91; for 2022-2023 it was £9.50. For the claimant's first 39 hours per week in the relevant period he was entitled to the NLW.
11. For the 28 weeks that falls in the year 2020-2021 the claimant was entitled to £9,522.24 (ie 39 hours x £8.72 x 28 weeks). For the 52 weeks of 2021-2022 he was entitled to £18069.48 (ie 39 hours x £8.91 x 52 weeks). For the 24 weeks that falls in the year 2022-2023 he was entitled to £8,892.00 (ie 39 hours x £9.50 x 24 weeks). This total is £36,483.72.
12. In the judgment I erroneously calculated that the claimant should receive £38,532.00 for the relevant period in basic wages (39 hours x £9.50 x 104 weeks). The other calculations for overtime, wages already paid etc are not subject to reconsideration and are unaffected. Taking the other calculations into account as per the judgment, the claimant's award for arrears of wages is reduced by £2,048.28 (ie £38,532 – 36,483.72).
13. The award for gross unpaid wages in the judgment after considering overtime and other factors that are unaffected by this reconsideration came to £40,792.12. I amend that figure to £38,743.84. The total award is amended by the same amount (ie £2,048.28) and so is amended from £44,745.01 to £42,696.73.
14. Upon reconsideration, I award the claimant £42,696.73 in total.

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Employment Judge Ficklin  
26 September 2023

JUDGEMENT & REASONS SENT TO THE PARTIES ON

29 September 2023

FOR THE SECRETARY OF THE TRIBUNALS