



## EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4102103/2023

Hearing on application for reconsideration on written submissions,  
considered by the Tribunal on 26 September 2023

10

Employment Judge A Kemp

15 **Miss Lauren Irving**

**Claimant**  
**Represented by:**  
**Ms Janice Reid**  
**Representative**

20 **Ms Anna Walden, trading as Bombshell**

**Respondent**  
**Represented by:**  
**Mr E Macfarlane**  
**Consultant**

25

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

#### The Tribunal

- 30
- (I) grants the respondent's applications for extension of time and for reconsideration,
  - (II) amends the Judgment by deleting the words and figures SIX HUNDRED AND FORTY NINE POUNDS THIRTY TWO PENCE (£649.32) and substituting therefor the words and figures FIVE HUNDRED AND FIFTY FOUR POUNDS THIRTY TWO PENCE (£554.32) and therefore
  - 35 (III) awards the claimant the sum of FIVE HUNDRED AND FIFTY FOUR POUNDS THIRTY TWO PENCE (£554.32) payable to her by the respondent.

#### REASONS

E.T. Z4 (WR)

## Introduction

1. A Judgment in this case was issued on 15 June 2023 (“the Judgment”). It was sent to the parties on 16 June 2023. It followed a Final Hearing at which the respondent had not appeared or been represented.
- 5 2. On 2 August 2023 the claimant’s new representative wrote to the Tribunal to apply for an extension of time to present the Response Form, and to raise the issue of reconsideration in relation to the calculation of remedy. It set matters out in a draft Response Form which accompanied the message.
- 10 3. On 4 August 2023 the claimant wrote to the Tribunal to seek an extract decree as payment of the sum awarded had not been made. The claimant was informed of the application made by the respondent, and responded on 17 August 2023 to dispute both applications.
- 15 4. The parties were asked for their views as to whether the applications should be addressed at a hearing or by written submissions under the terms of Rule 72, and despite a reminder the respondent did not reply. The claimant did on 20 September 2023, stating that her representative could not assist further but that she may seek legal aid to secure assistance from counsel. She made comments with regard to the application from the respondent which it explained by email on 20 21 September 2023 stating that it had made attempts to intimate it to the claimant’s representative.
- 25 5. I have concluded that it is appropriate to proceed without a hearing as I consider it in the interests of justice to do so under Rule 72(2), and to make a decision on the basis of the papers, in light of the circumstances, and that the parties have had an opportunity to make submissions. I do so for the reasons given below, and having regard to the effect of reconsideration which is to reduce the sum awarded by a relatively small amount, in the circumstances where there was an error of calculation in 30 the Judgment.

## The Law

6. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out the Rules of Procedure in Schedule 1, and those in relation to the reconsideration of judgments are at Rules 70 – 73. The provisions I consider relevant for the present application are as follows:

5                   **“70 Principles**

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.

10                   **71 Application**

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.

15                   **72 Process**

(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.

5 (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  
10 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.”

15 7. The power in the Rule is to be exercised having regard to the overriding objective in Rule 2. It states as follows:

**“2 Overriding objective**

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case  
20 fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the  
25 proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in  
30 interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

8. In ***Serco Ltd v Wells [2016] ICR 768***, the EAT observed that the Rules of Procedure must be taken to have been drafted in accordance with the principles of finality, certainty and the integrity of judicial orders and decisions. In ***Williams v Ferrosan Ltd [2004] IRLR 607*** reconsideration was allowed to make proper allowance for taxation as the Tribunal had made an error in calculation. In ***Banarjee v Royal Bank of Canada UKEAT/00189/19*** the extent to which a Tribunal may reconsider a Judgment of its own initiative, in the circumstances of that case, were reviewed.

## 10 Discussion

9. The respondent argued firstly that the Tribunal should exercise its discretion to receive the application for reconsideration although outwith the 14 day period, and to allow an extension of time to present the Response Form. I considered it in accordance with the overriding objective to do so. The reason for the late presentation of the application to reconsider is set out in the application itself, and is I consider a reasonable one. The basis on which the respondent seeks to have the Judgment reconsidered is also a factor to take into account. That is that there has been a miscalculation in it. That is a material matter which I consider also supports the application being granted to receive it late.

10. The second matter is the issue of the identity of the respondent. I reject the arguments for the respondent in that regard. The respondent was initially designed using her name, that was then amended to the trading name, she being a sole trader, and then in the Judgment confirmed again in the terms there set out. The respondent has always been only a sole trader. In law therefore she is an individual, using a trading name.

11. The third matter is the merits of the application to reconsider the Judgment in the amount awarded. A miscalculation was made in paragraph 27 and stated 83.35 hours not the true figure intended of 73.35 hours, being the earlier figure of 89.35 hours less 16 hours, which meant that the award was not correctly stated. This was a simple error made in the figure stated, but where the reasoning for what the true figures should have been is clear. The respondent disputes merely that issue of calculation. Liability is not disputed. No further evidence need be heard.

12. Against that the claimant points to the history of matters, her attempts to resolve them, and that the respondent did not appear at the hearing. Whilst her comments are understandable, it appears to me that they do not supersede those of the respondent. It is in the interests of justice, and the overriding objective itself, that an award is calculated as accurately as is possible. There was an error made in the Judgment which is easily corrected so as to arrive at the accurate figure. I may do so on my own initiative in any event either when the issue is pointed out by a party or noticed by me. The prejudice to the claimant if the application is granted is I consider less than that to the respondent if the application is refused, as she would only lose what is otherwise a form of windfall from the error in calculation.
13. The changes required to paragraph 27 are –
- (i) In the second sentence to reduce the figure to 73.35 hours.
  - (ii) Reduce the balance figure from 68.35 to 58.35 hours.
  - (iii) Multiply that figure by £9.50 to produce the correct figure of £554.32.

### **Conclusion**

14. The applications for extension of time and reconsideration are granted and the Judgment varied so as to substitute the amount of £554.32 for that in the Judgment as set out above.
15. Given all the circumstances I would encourage the respondent to make that payment without any delay.

25

**Employment Judge: A Kemp**  
**Date of Judgment: 26 September 2023**  
**Entered in register: 04 October 2023**  
**and copied to parties**

30