



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4103605/2022 Reconsideration Judgment**

**Employment Judge: M A Macleod**

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**Mr C G de Oliveira**

**Claimant**

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**The City of Edinburgh Council**

**First Respondent  
Represented by  
Ms K Sutherland  
Solicitor**

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**Katy Miller**

**Second Respondent  
Represented by  
Ms K Sutherland  
Solicitor**

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**Pat Brack**

**Third Respondent  
Represented by  
Ms K Sutherland  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that the expenses Judgment of  
40 28 July 2023 should be reconsidered, on the basis of new material  
information not **known to the Tribunal at the time of that Judgment; and that**  
the **Judgment** should be varied to the extent that the **claimant is now** ordered

**to pay to the first respondent the sum of Seven Hundred and Fifty Pounds (£750) by way of expenses. The Judgment remains otherwise unaltered.**

### **REASONS**

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1. In this case, the Tribunal issued a Judgment which was sent to the parties on 10 May 2023, in which the claimant's claim was struck out in full.

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2. On 7 June 2023, the first respondent made an application under Rules 76 and 77 of the Employment Tribunals Rules of Procedure 2013 for expenses against the claimant.

3. The Tribunal issued an expenses Judgment dated 28 July 2023, in which the claimant was found liable for the first respondent's expenses in the sum of £3,971.

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4. Following the issuing of that Judgment, no communication was received from the claimant, but Ms Sutherland, solicitor for the respondents, wrote to the Tribunal on 1 August 2023 to advise that the claimant's employment with the first respondent ended on 27 April 2023, and that it may be appropriate to draw this to the Tribunal's attention.

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5. The reason for this intervention was that the basis upon which the Tribunal awarded the full sum sought by the first respondent in respect of expenses was the claimant's continuing employment with the first respondent (paragraph 41). It was quite proper of Ms Sutherland to draw this to the Tribunal's attention, and as a result, I have considered it appropriate to treat this as an application for reconsideration of the expenses Judgment.

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6. Dealing simply with this matter, the Judgment may be varied or revoked if it is considered by the Tribunal to be in the interests of justice to do so.

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7. In my judgment, the fact that the claimant is no longer in paid employment with the first respondent is a material fact, which changes the Tribunal's understanding of his current employment position. He remains, according to Ms Sutherland, available on the first respondent's list of supply workers who

may be called upon from time to time, but is no longer in paid employment with them.

- 5 8. Given that the sum which was awarded was based upon an understanding of the claimant's employment position which turns out to be inaccurate, it is entirely appropriate that the Tribunal reconsiders the conclusion reached on that basis.
- 10 9. Having reflected upon the matter, it is relevant not only to consider that the claimant is no longer employed by the first respondent, but also that he has not communicated at all with the Tribunal since the Judgment was issued and has not made available to the Tribunal any information as to his means to pay any award of expenses.
- 15 10. It is my judgment, however, that since there is no evidence that the claimant is currently earning any salary, and since it is not known whether or not the claimant has in fact secured any further paid employment since his employment with the first respondent ended, it is in the interests of justice to reduce the amount awarded in relation to expenses against the claimant in this case.
- 20 11. It is difficult to be precise as to the exact sum which should be awarded in this case. That the claimant should be required to pay a measure of the first respondent's expenses has already been determined, and I see no reason to depart from the conclusions reached in the Judgment of 28 July 2023 in that regard. However, it is my conclusion that the sum which he should be required to pay should be reduced as a result of the greater uncertainty as to his employment and earning position at this stage.

12. In these circumstances, I have concluded that the claimant should be required to pay to the first respondent the sum of £750 by way of expenses, and that the expenses Judgment of 28 July 2023 should be varied accordingly.

<b>Employment Judge:</b>	<b>M Macleod</b>
<b>Date of Judgment:</b>	<b>29 September 2023</b>
<b>Entered in register:</b>	<b>02 October 2023</b>
<b>and copied to parties</b>	