



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Taheri (using the alias James Davidson)

**Respondent:** Nuestra Familia Restaurants Ltd

**Heard at:** Burnley

**On:** 28 September 2023

**Before:** Regional Employment Judge Franey  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss E Youshari, Counsel

# JUDGMENT

Upon reconsideration, the Judgment sent to the parties on 15 June 2023 is confirmed. That Judgment remains binding.

# REASONS

## Introduction

1. This hearing concerned an application by Mr Taheri for reconsideration of a Judgment issued in writing with reasons on 15 June 2023 (“the June Judgment”). The June Judgment should be read before the remainder of these reasons.

2. In the June Judgment I found as a fact that the claimant in these proceedings, who had used the name “James Davidson” on the claim form, was in reality David Taheri and that the claim had been presented in breach of a Restriction of Proceedings Order made against Mr Taheri by the Employment Appeal Tribunal in February 2022 (“the RPO”).

3. I ordered Mr Taheri to pay costs in the sum of £4,136.00 because he had acted vexatiously and unreasonably in pursuing an application for employment with the respondent in 2023, and in bringing the Employment Tribunal proceedings under a false name to avoid the RPO.
4. When the June Judgment was issued by email to the address provided on the claim form, the solicitors for the respondent sent it to Mr Taheri, whose email address they had from a previous job application.
5. He responded the same day to ask that the Judgment be rescinded. He asserted that someone had acted maliciously to cause him trouble, that he was he was not James Davidson and did not know anyone of that name, and that he had no connection to the email address provided by James Davidson, namely crazyman2015@engineer.com.
6. That email of 15 June 2023 was treated as his application for reconsideration.
7. The reconsideration hearing was listed in person in Manchester but was moved to Burnley Combined Court by way of a reasonable adjustment for Mr Taheri. His prostate cancer condition means that longer journeys are difficult for him.
8. A bundle of documents had been prepared by the respondent which added about 180 pages to the bundle for the hearing in June 2023. Any reference to page numbers is a reference to that bundle<sup>1</sup>.
9. As his application sought to overturn a finding of fact made at a hearing at which Mr Taheri had not been present, I invited him to give evidence. Despite initial reluctance he agreed to do so pursuant to an affirmation.
10. The respondent did not wish to call any oral evidence, relying on the evidence from Ms Lee which was given at the hearing in June 2023.
11. At the conclusion of his evidence both sides made an oral submission. Mr Taheri then asked if I could reserve judgment rather than keep him waiting at the court for an oral judgment. There was no objection to this from Miss Youshari. Judgment was reserved at the end of the hearing.

### **Relevant Legal Framework**

12. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
13. On reconsideration, a judgment can be confirmed, varied or revoked.
14. In common with all powers under the 2013 Rules, the power to reconsider must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly.

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<sup>1</sup> By agreement no reference was made to medical records which appeared in the bundle between pages 146 and 302, as they were not relevant to the issue for determination.

**Mr Taheri's Evidence**

15. Having taken the affirmation and confirmed his address as 59 Queensway, Mr Taheri gave evidence in support of his application in response to questions from Miss Youshari. He also answered two questions from the Tribunal.

16. Mr Taheri agreed that the application made in his name and the application made by "James Davidson" were made by the same person. That was the conclusion I had reached in the June judgment. The point on which his application turned was whether he was that person, or whether it was someone else with a grudge against him. His evidence was to the following effect.

17. He had applied for the role with McDonald's in 2021 (pages 104-108) but had not pursued any ET claim at that stage.

18. He had not applied for employment with McDonald's in January 2023, whether under his own name or under the alias James Davidson.

19. The core of his evidence was that a person unknown to him with a grudge against him had used personal information about him to make an application in the name of David Taheri (pages 109-114) and a little later the same day as James Davidson (pages 115-120). The person concerned had deliberately used both names in the two applications, admitted in the course of those applications that James Davidson was an alias of David Taheri, and then made the Employment Tribunal application in the name of James Davidson in order to get past ACAS early conciliation and have a claim accepted and served. Mr Taheri described this as a "conspiracy", albeit he was suggesting only one person had been involved. The aim was to secure a position where it appeared he was in breach of the RPO, and liable for the costs of the respondent. This had been done as a device to cause him trouble, worry and financial expense.

20. When asked who might have done this Mr Taheri said he did not know, but put forward three possibilities:

- (a) Someone with a grudge against him from a previous employment application where he had gone to ACAS or brought an ET claim.
- (b) Someone with a grudge against him from a previous employment of his.
- (c) Someone with a grudge against him from within McDonalds.

21. He said that people within McDonald's had access to his personal information from the 2021 application, such as that he had worked for Burger King in the 1980s (page 105). Alternatively, personal information about him was available on the internet from the Employment Tribunal and Employment Appeal Tribunal Judgments which are posted online, and therefore the person who undertook this exercise would have known of the RPO.

22. I took particular note of the following passages of his evidence.

23. Firstly, it was put to Mr Taheri that in the 2021 job application he had given his address as 50 Queensway, whereas in the January 2023 application in his name the address was given as the correct address: 59 Queensway. Miss Youshari suggested that whoever made the January 2023 application was not someone from McDonald's relying on the information they held from 2021. Mr Taheri said he was not saying that the person making that application was at McDonald's. He pointed out that his CV gave the correct address, and that his CV was routinely provided to different employers when he made job applications.

24. Secondly, Mr Taheri said that he had been "a victim of ID fraud". He was asked if he had reported it to the police. He responded by saying that it was "nothing to do with the police". There was no fraud committed and no money taken from him. Miss Youshari pressed the point, as he was suggesting there had been ID theft, and a few moments later Mr Taheri said that he had spoken to the police, there had been a brief telephone call after a long wait to get through, but they had said it was not a criminal matter and nothing to do with them. Miss Youshari suggested in submissions that he had changed his evidence on this point, as he realised it looked odd that he had not reported it to the police.

25. Thirdly, Mr Taheri was questioned as to why in his reconsideration application at page 135 he had only talked about the application made by James Davidson. He had not said in his reconsideration application that he had not made the David Taheri application either. His response was to say that he had not been looking to introduce every point in that brief email.

26. Fourthly, the chatbot exchanges in January 2023 (pages 39-50) contained some personal information about Mr Taheri which included that he had cancer and needed to urinate frequently, and also seemed to be consistent with his practice of bringing complaints of disability discrimination when unsuccessful in job applications. His response was to say that the personal information had been shared with numerous employers in job applications over the years, and the fact he had prostate cancer was evident from the ET and EAT Judgments online, and that a need to urinate frequently was a well-known symptom of prostate cancer. He suggested that the person impersonating him could have obtained all this information from the internet. He asserted that the claim forms he had submitted in litigation over the years were accessible to the public. He also said that the application made to the Employment Appeal Tribunal was available online, and not simply the EAT Judgment. Alternatively, he said it could be based upon information he had given to previous prospective employers.

27. Fifthly, I asked Mr Taheri why he thought that the person pretending to be him would have given his actual telephone number and email address when naming him as a referee in the application made by James Davidson. That created a risk that the scheme would unravel if someone from the respondent telephoned the referee to ask about James Davidson, since the real Mr Taheri would have said he had nothing to do with James Davidson and had not applied to McDonald's in 2023. Mr Taheri answered this question by saying that he did not know why that had been done, but possibly the culprit was being silly or playing games.

**Claimant's Submission**

28. In addition to relying on his oral evidence summarised above, Mr Taheri submitted that overall he would not have been so stupid as to embark upon such a scheme, which was always going to be uncovered because there was an admission in the chatbot exchanges that "David Taheri" and "James Davidson" were the same person. He was familiar with Employment Tribunal litigation and the role of ACAS and had he been intending to circumvent the RPO he would have done it in a way that could not have been discovered so easily.

**Respondent's Submission**

29. On behalf of the respondent Miss Youshari resisted the application for reconsideration and said that the June judgment should be confirmed. She emphasised that there were no personal details available online to the general public, other than what was contained in ET and EAT Judgments; that his evidence as to whether he contacted the police was contradictory but that he plainly would have done so had the position been as he now asserted; and that he would not have been named as a referee by the culprit had there been an attempt to cause trouble for him by pursuing an Employment Tribunal complaint. The reality, submitted the respondent, was that this had been a device by Mr Taheri to avoid the effect of the RPO in the hope of getting some money out of the respondent by way of a settlement.

**Discussion and Conclusions**

30. The factual conclusion which underpinned my Judgment in June 2023 was that Mr Taheri had applied for employment with McDonald's in January 2023, had disclosed his cancer and had submitted an identical application save that it used the name James Davidson and made no reference to cancer. That was a device to enable him to pursue a claim when he was refused an assessment interview but Mr Davidson was granted one. In pursuing the claim he used the name James Davidson in the hope that a settlement would be secured before it became apparent that it was really a claim by David Taheri in breach of the RPO.

31. Mr Taheri's application for reconsideration was based on an alternative hypothesis summarised in paragraph 19 above: the two applications, and the subsequent Employment Tribunal claim, had been pursued by an unknown person with a grudge against him in order to cause Mr Taheri trouble.

32. I considered whether it was in the interests of justice to accept that hypothesis as more likely than the one which underpinned my Judgment in June 2023.

33. I recognised that Mr Taheri's hypothesis did explain the points on which I relied in paragraphs 85-87 of the Reasons issued in June 2023. On his case the two applications were made by the same person, and James Davidson was indeed an alias which explained why no ID documents were supplied by Mr Davidson when the Tribunal asked him for them. I also recognised that if Mr Taheri was correct in what he was saying then it would be difficult for him to prove a negative: that he was not the person who had made those applications and the ET claim.

34. I discounted the fact that his reconsideration application made no mention of the Taheri job application (paragraph 25 above) as it was an email sent as an

immediate response in the Employment Tribunal case brought in the name of James Davidson.

35. Even so, there were a number of matters which drove me to conclude that the hypothesis put forward by Mr Taheri was significantly less likely than the one which underpinned my judgment.

36. Firstly, Mr Taheri initially appeared to suggest that the person making the fake applications in 2023 was someone from within McDonald's who had access to his 2021 application, but he was unable to explain the difference between the address he gave in 2021 (50 Queensway) and the 59 Queensway address given in 2023. At this point he said he was not saying that it was someone within McDonald's. That left a further difficulty for him, however, in that the person who completed the applications and chatbot exchanges had some personal information about him which was not readily available online from ET and EAT Judgments, such as his having worked at Burger King in the 1980s. He was wrong to say that claim forms and his application to the EAT were available online to the general public: only the ET and EAT judgments are so available

37. Secondly, his evidence as to whether he had contacted the police was unconvincing. His initial response to that question was to dismiss it because it was "nothing to do with the police". He was then pressed by Miss Youshari on the basis that he would have done so had there really been identity theft, and he gave a different answer which was that he had contacted the police and he explained what they had told him. I found as a fact that Mr Taheri had not contacted the police about this matter, which suggested that he did not really think there had been any identity theft.

38. Thirdly, it seemed significant to me that "James Davidson" had given Mr Taheri's actual telephone number and email address as contact details for his referee. That made perfect sense if Mr Taheri was hoping that James Davidson's application would progress, since if the recruitment team at McDonald's rang the referee Mr Taheri would no doubt have given a glowing reference for James Davidson. However, it made no sense if it was in reality a third person using both names in a false way, because the falsehood would immediately have become apparent if the call to James Davidson's referee had been made.

39. Fourthly, although Mr Taheri asserted in his reconsideration application that he had been the victim of bogus emails and scams, he produced no evidence of any kind in support of that contention.

40. I took account of Mr Taheri's assertion that he was too intelligent to have devised such a transparent scheme to pursue McDonald's for compensation and bring a claim evading the RPO. I recognised that the admission in the chatbot exchanges that David Taheri and James Davidson were the same person meant that any attempt to pursue a subsequent ET claim to a successful conclusion was likely to be frustrated by the RPO. But that point seemed to me to apply equally to the unknown culprit who, on Mr Taheri's case, had sought to cause trouble for him by making two applications to McDonald's and then bringing proceedings in the name of James Davidson.

41. Putting these points together, Mr Taheri failed to persuade me that it was in the interests of justice to vary my judgment because the two 2023 applications and this case were the handiwork of an unknown third party with a grievance against him. It

was much more likely, I concluded, that he applied to McDonald's both in his own name and using the alias of James Davidson in order to expose that his cancer was the reason why he was not offered an interview but Mr Davidson was, and then sought to bring proceedings as James Davidson in the hope that he could obtain a settlement from McDonald's before the effect of the RPO became apparent.

42. On that basis I confirmed paragraphs 1-4 of my Judgment sent to the parties on 15 June 2023.

### **Reconsideration of Costs Order**

43. A subsidiary point arose during the hearing. Mr Taheri said that even if I was against him on the central point, I should still reconsider and vary the amount ordered in relation to costs because his ability to pay had not been taken into account.

44. On affirmation Mr Taheri said that his ability to pay was still as it had been when he provided information to Judge Holmes at a costs hearing on 4 August 2023 in case number 2411529/2018. The information he gave in his evidence was consistent with what is recorded in that Judgment, which was sent to the parties on 18 August 2023, and Miss Youshari did not seek to challenge it.

45. I was therefore satisfied that the claimant is in the following financial position. His only income is state benefits of £169.85 per fortnight. He owns his own property, which is valued at £115,000 and which is free of mortgage. He has a car which is expensive to run. As for debts, he has debts on a range of credit cards of approximately £18,000, and in addition is liable as a consequence of the Judgment of EJ Holmes to pay costs of £20,000 in case number 2411529/2018.

46. Having considered this, I declined to vary the order I made in this case. I accept that Mr Taheri is unable to pay the costs from his day-to-day income. However, he has substantial equity in his home which is potentially available to satisfy the judgment made. I was satisfied that it is not in the interests of justice to vary the amount set out at paragraph 5 in my Judgment from June 2023.

47. Miss Youshari confirmed that there was no application made by the respondent for the costs of the reconsideration hearing.

Regional Employment Judge Franey  
10 October 2023

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON 17 OCTOBER 2023

FOR THE TRIBUNAL OFFICE

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