



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Paul Whittaker

**Respondents:** Dogwoof Limited  
Mr Anthony Tabatznik

## RECONSIDERATION JUDGMENT

The Claimant's application dated 20<sup>th</sup> November 2023 for reconsideration of the Judgment sent to the parties on 6<sup>th</sup> November 2023 is refused.

## REASONS

1. By my Judgment with full written reasons sent to the parties on 6<sup>th</sup> November 2023 ('the Judgment') I ruled on a number of issues that had been listed for determination at a Preliminary Hearing on 2<sup>nd</sup> August 2023, as follows:
  - 1.1. Issue 1a: The complaints in the 2<sup>nd</sup> Claim (2207875/2022) have been presented out of time.
  - 1.2. Issue 1b: It was reasonably practicable for the 2<sup>nd</sup> Claim to have been presented in time. Permission to extend time for the Employment Rights Act claims is refused.
  - 1.3. Issue 1c: it would be just and equitable to extend time for presentation of the Equality Act claims by one month until 12<sup>th</sup> October 2022. Permission to extend time for the Equality Act claims is granted.
  - 1.4. Issue 2: An application to amend the 2<sup>nd</sup> Claim to include a s20-21 Equality Act claim is not required and that claim proceeds.

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- 1.5. Issue 3: The application to extend time to allow the Public Interest Disclosure complaints to proceed is refused. An application to amend the 1<sup>st</sup> Claim to include detriments is required and the said application is refused.
  - 1.6. Issue 4: The Respondent's costs application in respect of the hearing on 10<sup>th</sup> May 2023 is refused.
  - 1.7. Issue 5: The Respondent's costs application in respect of the hearing on 24<sup>th</sup> May is granted and is assessed in the sum of £5,040.00 inclusive of VAT.
2. By an application for reconsideration made in time on 20<sup>th</sup> November 2023, the Claimant has asked that I reconsider the following parts of the Judgment:
- 2.1. Issue 1a: The complaints in the 2nd Claim (2207875/2022) have been presented out of time.
  - 2.2. Issue 1b: It was reasonably practicable for the 2nd Claim to have been presented in time. Permission to extend time for the Employment Rights Act claims is refused.
3. The Claimant relies on the following grounds to support his application for a reconsideration of my Judgment on Issues 1a and 1b above:
- 3.1. Health Condition: Between May 2020 and July 2021, I was experiencing significant poor health at the time, including my mental health disorder, and trauma caused by my dismissal on top of my mental health disorder, significantly impacting my ability to navigate legal matters effectively.
  - 3.2. Incorrect Advice from ACAS and BECTU. I received inaccurate advice from ACAS and BECTU to await the outcome of my appeal, and settlement discussions, a pivotal factor in the timeline of events leading to the claim, along with ongoing settlement discussions that added complexity to the situation.
4. The Claimant identified the following factors that he asserts are relevant when considering an extension of time:
- 4.1. The Tribunal should consider pertinent factors outlined in the Limitation Act 1980, including the length and reasons for the delay, the conduct of

- the Respondent, the duration of any disability, and the steps taken by the Claimant to obtain advice.
- 4.2. The impact of incorrect advice from ACAS on a Claimant's ability to adhere to statutory time limits: **DHL Supply Chain Ltd v Fazackerley**:
  - 4.3. The importance of considering all relevant factors, including the balance of convenience and the chance of success when extending time: **Rathakrishnan v Pizza Express (Restaurants) Ltd** UKEAT/0073/15/DA:
  - 4.4. The relevance of mental health challenges when appeals are lodged late, urging consideration in the just and equitable test: **J v K** (Court of Appeal 2019). Given his significant and ongoing mental health challenges, and diagnosed disorder, it is crucial to acknowledge the considerable impact of misinformation on his decision-making processes and the timing of his actions.
  - 4.5. The demonstrable Lack of Prejudice. The short delay in presenting his claim did not cause any demonstrable prejudice to the Respondent, aligning with the principles laid out in **Rathakrishnan v Pizza Express**.
5. The Tribunal has power to reconsider any judgement where it is necessary and in the interests of justice to do so. Rule 72 of the Employment Tribunals Rules of Procedure sets out the process for reconsideration requests. It directs that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.
  6. In **Trimble v Supertravel Ltd** [1982] IRLR 451 the Employment Appeal Tribunal stated, '*If the matter has been ventilated and properly argued at the original hearing, than errors of law of that kind fall to be corrected by this Appeal Tribunal*'. The EAT emphasised that the reconsideration procedure is there so that where there has been an oversight or some procedural occurrence, such that a party cannot be said to have had a fair opportunity to present their arguments on a point of substance, they can bring the matter back to the tribunal for adjudication. An application for reconsideration under all 70 must include a weighing of the injustice to the applicant if the reconsideration is refused, and the injustice to the respondent, if it is granted, also giving weight to the public interest in the finality of litigation: **Phipps v Primary Education Services Limited** [2023] EWCA Civ 652. It is valuable to draw attention to the importance of the finality of litigation and the view that it would be unjust to give the losing party a second bite of the cherry: **Newcastle Upon Tyne City Council v Marsden** [2010] ICR 743.

7. The factors to be considered in determining whether it is in the interests of justice to reconsider a decision can still include the specific grounds identified in the 2004 Rules of Procedure, namely (i) whether decision was wrongly made as a result of an administrative error; (ii) where a party did not receive notice of the proceedings leading to the decision, (iii) where the decision was made in the absence of a party; and (iv) when evidence had become available since the conclusion of the hearing which could not have been reasonably known or foreseen at the time.
  
8. In considering the Claimant's reconsideration request it is clear that none of the 2024 specific factors apply or are relied on in this case. In considering the interests of justice generally the Claimant was well represented by experienced Counsel who had the opportunity to re-examine the Claimant after he had given his evidence and made oral and written submissions on his behalf. The Judgment recorded and considered the factors relied on by the Claimant that he relies on again in his application for reconsideration, namely his poor health, inaccurate advice from ACAS and the hope that his dispute would be resolved internally via the Respondent's grievance process. However, the Claimant accepted in cross examination that he had undertaken legal research into the requirement to notify ACAS of a dispute in May 2021 and that he appointed solicitors at that time. He accepted that he was aware of whistle blowing, unfair dismissal and discrimination. The Judgment recited the 'reasonable practicality' test for extending unfair dismissal (including automatic unfair dismissal) claims and the relevant authorities that considered that test. It noted that the claims were submitted 4 weeks late. The Respondent argued that the Claimant was able to partake in the grievance process (despite his illness) and that all of his claims could have been presented in his first claim, which was presented in time.
  
9. In all of the circumstances it is my judgment that there is no reasonable prospect of the original decision being varied or revoked, because, for the reasons stated above, it would not be in the interests of justice to do so.

Employment Judge **Gidney**

Dated this 22<sup>nd</sup> December 2023

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JUDGMENT SENT TO THE PARTIES ON

22/12/2023

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FOR THE TRIBUNAL OFFICE