



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. G. Kekati

**Respondent:** Skinfluencer Ltd and 3 others

**London Central  
Employment Judge Goodman**

**5 March 2024**

## RECONSIDERATION OF COSTS JUDGMENT

1. The costs judgment sent to the parties on 7 February 2024 has been reconsidered on the claimant's application dated 19 February 2024.
2. The judgment is confirmed.

## REASONS

1. Following a judgment in favour of the respondents, the respondents applied for costs, to be determined without a hearing. The claimant was ordered to file any written representation by 19 September.
2. On 5 February I considered the case papers and ordered that the claimant pay the respondents costs in the sum of £1,750. The reasons for the judgment included (paragraph 8) that no representation had been submitted by the claimant, and (paragraph 9) that the tribunal had no evidence of the claimant's ability to pay. The judgment was sent to the parties on 7 February.
3. On 19 February the claimant's solicitor wrote pointing out that she had made representations to the tribunal by letter of 19 September, and applied therefore for reconsideration of the costs judgment.

### Relevant Law

4. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal "may reconsider any judgment where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.
5. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of

the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

6. When making decisions about claims the tribunal must have regard to the overriding objective in rule 2 of the 2013 regulations, to deal with cases fairly and justly, which includes ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, and seeking expense.

### **Discussion and Conclusion**

7. Having made enquiries with HMCTS staff at London Central employment tribunal I understand that the claimant's solicitor's letter and attachments of 19th September 2023 were received by the tribunal, but they were never referred to me, or any other judge, nor were they uploaded to the tribunal's electronic case file. It was referred to me by the delivery manager on 22nd February 2024, together with the application to reconsider, following a complaint from the claimant's solicitor. I comment that at the time of writing it has still not been uploaded to the tribunal's electronic case file.
8. It is obviously in the interests of justice that the costs judgment is reconsidered. The claimant's submissions must be heeded before there can be a just decision on the respondent's costs application.
9. I reconsider the judgment without a hearing because both sides wished the costs application to be decided on the papers and because the letter of 19 September was copied to the respondents at the time. They did not make any additional submission at the time and there seems no reason to invite their comment on its content now.
10. The letter of 19<sup>th</sup> September was responding to all the respondent's arguments, specifically: lack of costs invoices; the rejection of the strike out application; unreasonable conduct over the hearing bundle; postponement of the July 2022 hearing, the respondent's lack of cooperation in lifting the document count in the bundle ordered by EJ J. Burns, the last minute change in the first respondent's representative, rejection of offer to settle, that the respondent should have applied to strike out or for a deposit order on time points, the lack of time recording, the claim for witness expenses, and ability to pay, for which there was a separate witness statement by the claimant, a witness statement which includes some commentary on the conduct of the case, and some documents evidencing her rent and her debts. There was a bundle of inter partes communication on documents, and a timeline.
11. Much of this is not relevant to reconsideration, because most of these arguments by the respondent were rejected in the reasons for the judgment.
12. Neither the claimant's solicitor's submissions, nor the claimant's witness statement, address why she submitted a much longer and more complex witness statement dealing with much new material when she had been given permission to add statements only on the hacking episode in July 2022 and on the two additional [protected disclosures, and ordered only to reserve her statement with page numbers to the bundle which was, in July 2022, in an incomplete state. This was the ground for ordering costs to be paid. I take account of the detailed narrative of working to produce a bundle after EJ Khan's case management direction of 7 March (lifting the limit on the bundle size) such that there was pressure of time to add page numbers to the witness statements already prepared for the July hearing or for the

amendment, but this still does not explain why such a new and very long witness statement was produced, which took up so much time in the final hearing starting on 20 April 2024. Had I considered the 19 September submissions when I issued the costs judgement in February 2024, they would have contributed nothing to my finding on this point, and on the point of reasonable conduct of the hearing, I would not reconsider it now.

13. I have now considered the claimant's ability to pay. She worked for Bausch and Lomb for 12 months as maternity cover from February 2022 (when she resigned from the respondent's employment) to February 2023 for an unstated salary. By September 2023 she was still out of work. She pays rent of £1,350 per month. She has some Universal Credit. She owes £22,331 on a business loan from 2020, and another £10,565 in bank overdraft and on credit cards. She owes £1,200 to counsel and £3,000 to her solicitor. She states she has no assets.
14. The claimant is currently without ability to pay. Nevertheless she retains some earning capacity and was able only recently to work for 12 months. There is no health reason why she should not be able to find some kind of work, within or without the beauty industry, or related health fields. The sum ordered is relatively modest. Had I had this information when making the decision, I would still have made the order.
15. Thus while I appreciate the claimant's annoyance that her representations were not referred to me before the judgment was made, I regret that for the reasons given, having reconsidered the judgment in the light of the representations I do not see grounds to vary or revoke it.

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Employment Judge GOODMAN

Date 5 March 2024

JUDGMENT SENT TO THE PARTIES ON

19 March 2024

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FOR THE TRIBUNAL OFFICE