



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant:** A.B.

**Respondent:** X.Y.

**HELD** on the papers **ON** 11 July 2024

**EMPLOYMENT JUDGE** G. King

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

1. The Judgment of the Tribunal is that the Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

## **REASONS**

1. The Respondent has applied for a reconsideration of the Judgment dated 8 April 2024 ("the Judgment"), which was sent to the parties on 19 April 2024. written reasons were requested by the Respondent on 19 April 2024. The written reasons are dated 10 May 2024 and were sent to the parties on 29 May 2024.
2. The Respondent has applied for a reconsideration in two emails, one dated 1 July 2024 and the second dated 2 July 2024.

3. A request for Reconsideration must be received by the Tribunal within 14 days of the date of the Judgment, or Written Reasons if these are requested, being sent to the parties. The Respondent's request is therefore out of time. The Tribunal has, however, considered the request in any event.
4. This reconsideration has been on the papers alone as the Tribunal did not consider that a hearing is necessary. The order made is described above.
5. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received outside the relevant time limit.
6. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
7. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
8. Rule 70 of the Rules provides a single ground for reconsideration, being the interests of justice. This replaced the previous test, which gave five grounds for reconsideration; one of these was that new evidence had become available since the conclusion of the Tribunal hearing to which the decision related, the existence of which could not have been reasonably known of or foreseen at that time. However, it is clear that, following *Outasight VB Ltd v Brown* [2015] ICR D11 EAT that the interests of justice test can be viewed through that lens. The EAT confirmed in that case that the test set out by the Court of Appeal in *Ladd v Marshall* 1954 3 All ER 745, CA.
9. The Respondent has put forward three grounds for why he says the Judgment should be reconsidered.
10. The first of these is that he says he did not think that the Claimant would be believed. If the Respondent wanted to challenge the Claimant's evidence, he or his representative could have attended the Tribunal and put questions to the Claimant. Neither the Respondent nor his representative did attend the final hearing, and so the Claimant's evidence, which in any event was clear and believable, went unchallenged. The Respondent's opinion that the Claimant would not be believed is not a ground where it is in the interests of justice for the Judgment to be reconsidered.
11. The Respondent also says that he did not attend the Tribunal as he had to work that day. The Respondent was aware of the date and time of the hearing since 16 October 2023. He was also aware of the serious

allegations that were being made against him. As above, if he wished to challenge those allegations, he should have attended the hearing and provided his own account of what happened. He did not provide a proper witness statement, nor did he attend the hearing. This was the Respondent's own choice. There was no application from the Respondent to adjourn the hearing, and an adjournment sought purely on the grounds that the Respondent needed to work that day would have been unlikely to have been granted in any event. The Respondent had plenty of notice of the date of the hearing and it was his choice to attend or not. Even if he chose not to attend, he could have sent his representative to cross-examine the Claimant and challenge her evidence. It is not in the interests of justice for the claim to be reconsidered on the ground that the Respondent was at work on the day of the final hearing.

12. Respondent further says he now has a Judgment against him which he cannot pay. The award made in any Judgment is to compensate the injured party for the wrong that has been done to them. Awards for damages are not based on the paying party's financial situation. In respect of any award for costs, there is a duty on the Tribunal to make reasonable enquiries into the paying party's means. Neither the Respondent nor his representative attended the hearing and therefore it was not possible for the Tribunal to ask any questions of the Respondent. As noted above, it was Respondent's choice not to attend. The Tribunal therefore considered that it had discharged its duty to make reasonable enquiries, as was not reasonable to take any further steps, given the Respondent's non-attendance. In any event, this would only be relevant in respect of the Preparation Time Order (the order that the Respondent pay "costs") of £2,277.33. The Respondent's inability to pay the Judgment sum of £23,163.75 and costs of £2,277.33 is not a ground where it is in the interests of justice for the Judgment to be reconsidered.
13. The Respondent's email raises disputes that he has with the Claimant's evidence and seeks to put forward evidence of his own. The appropriate place to challenge the Claimant's evidence was at the final hearing, and the Respondent did not do so. There must be finality in litigation, which is in the interest of both parties (*Newcastle Upon Tyne City Council v Marsden* [2010] IRLR 743). The final hearing of this case was just that – the final hearing. It is not in the interests of justice to extend the litigation beyond the final hearing, nor to conduct challenges to evidence by way of emails.
14. Taking the above together, the Tribunal does not consider that it is in the interests of justice to reconsider the original Judgment.

15. Accordingly, the application for reconsideration pursuant to Rule 72(1) is refused because there is no reasonable prospect of the Judgment dated 8 April 2024 being varied or revoked.

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Employment Judge King

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Dated 11 July 2024

Original Judgment sent to Parties on  
25 July 2024

Amended Judgment sent to parties on  
16 August 2024