# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Wooler

**Respondent:** Ropewalks Leisure Group Ltd

# JUDGMENT

The application of the claimant, dated 14 July 2024, for reconsideration of the Judgment made on 15 May 2024 with the written reasons sent to the parties on 1 July 2024, is refused.

# REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The Judgment was issued after a hearing. The claimant attended, gave evidence, and was given the opportunity to say in his oral submissions anything which he wished to.

2. The respondent did not call any witness to give evidence at the hearing, which is why the claimant was not given the opportunity to cross-examine anyone. In any event, cross-examination is not the opportunity for a party to explain their case.

3. What is written in the claimant's document are things which he could have raised in his submissions had he wished to do so. The application for reconsideration does not provide any information about events which have occurred since the hearing, or detail that evidence/documents have come to the claimant's attentions since the hearing. The application appears to be based upon arguments about which the claimant was aware (or could have been aware) at the time of the hearing.

4. Many of the arguments put forward are exactly the same arguments which the claimant did put forward and was able to explain at the hearing. Those arguments did not succeed.

5. 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). The Court of Appeal in **Ministry of Justice v Burton** [2016]

EWCA Civ 714 has emphasised the importance of finality, which militates against the discretion being exercised too readily. In exercising the discretion, I must have regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

6. In **Ebury Partners UK v Davis** [2023] IRLR HHJ Shanks said:

> "*The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.*"

7. As is said in that Judgment, it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party has been denied a fair and proper opportunity to present his case. What is put forward in this application for reconsideration is an attempt at having the second bite of the cherry, which the Judgment I have quoted warns is not appropriate.

8. The claimant did argue at the hearing that his contract meant that he could only be dismissed in his probationary period for evidenced failure to perform. That was addressed in the Judgment delivered and the written reasons provided. The claimant was, in effect, endeavoring to pursue an argument of unfairness appropriate to an unfair dismissal claim and not a breach of contract claim. An employer is able to operate the contract and terminate according to its terms, even where an employee does not agree with the reason or believe that the reason can be evidenced.

9. The claimant did not raise the case of Gunton v Richmond-Upon-Thames London Borough Council in his submissions at the hearing. He could have raised it in his submissions. Had he done so, I would have considered the novel argument that that particular authority meant that the claimant should recover one week's damages and succeed in his breach of contract claim because he said the respondent could not prove the reason for terminating his contract during his probationary period. I have considered whether citing that case should mean that the Judgment should be reconsidered and whether there is any prospect of the original decision being varied or revoked. I have decided that there is not, and I should not. The case was not relied upon at the time when the claimant had the opportunity to make submissions and, in any event, I do not see any prospect of the claimant succeeding in an argument that it would have the application to his circumstances which he contends.

10. I have no idea what it is the claimant is referring to when the refers to provisions of the Labour Relation Act 1995. That may be a law which applies in another jurisdiction/country. However and in any event, as with the case law cited,

if he wished to refer to legislation and rely upon it, he should have raised it at the hearing when he had the opportunity to make submissions.

11. The ACAS code of practice on disciplinary and grievance procedures was considered and addressed in the Judgment provided.

12. There was no mistake in the way that the Judgment was reached.

13. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

14. Preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes, so far as practicable, saving expense. It also includes dealing with cases in ways which are proportionate to the complexity and importance of the issues. Achieving finality in litigation is part of a fair and just adjudication.

15. I do not find that it is necessary in the interests of justice to reconsider the Judgment, based upon the application made by the claimant. There is no reasonable prospect of the original decision being varied or revoked, based upon the reasons given. The application for reconsideration is refused.

Employment Judge Phil Allen
5 August 2024

JUDGMENT SENT TO THE PARTIES ON
8 August 2024

FOR THE TRIBUNAL OFFICE