



EMPLOYMENT TRIBUNALS

Claimant: Mrs I Turina

Respondent: Penny Davis T/A DPC Clinic

JUDGMENT

The claimant's application dated **27 August 2024** for reconsideration of the judgment sent to the parties on **13 August 2024** is refused.

REASONS

Rules on reconsideration

1. The rules relating to applications for reconsideration are set out at Rules 70-73 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Of relevance to my decision in this application are the following:

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72.(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused),

the application shall be refused and the Tribunal shall inform the parties of the refusal...

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it.

2. The Tribunal has discretion to reconsider a judgment if it considers it to be in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.
3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having 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.
4. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

The claimant's application

5. The claimant's application was presented, in writing within fourteen days of the written judgment being sent to the parties and so complies with Rule 71.
6. The application states the following:
 - a. *The judge erred in finding that Penny Dee Ltd was not insolvent at the point of the TUPE (Para 32.5 of the judgment) and dismissing "technical insolvency" as a material irrelevance, despite the very real possibility of a transfer at an undervalue having taken place in circumstances where the training contract's benefit was transferred to the Respondent despite Penny Dee Ltd having incurred all of the costs.*
 - b. *The judge erred in finding that the training contract was incorporated into the employment contract where there was no evidence of the same and contra proferentem would demand that the terms be read against the Respondent.*
 - c. *At Paragraph 32.6 the judge found that the Respondent remained liable to pay the fees to the Skin Care College, despite finding that there had been no novation of Penny Dee Ltd's agreement with the Skin Care College; it is submitted that this finding, it is said respectfully, must rest upon a mistake of fact in the absence of evidence as to novation.*

7. Each of these matters assert that I erred in my findings of fact. They were all matters which I was addressed on in submissions from the claimant's counsel and gave due consideration to. Findings of fact were made based upon the evidence as presented, and I applied the law to those findings in the conclusions.
 - a. As regards the first ground, the finding of fact at paragraph 32.5 of the judgment was that at the time of the TUPE transfer Penny Dee Ltd was **not the subject of insolvency proceedings** and that "absent evidence of formal insolvency proceedings having been commenced and/or the formal appointment of an insolvency practitioner, the fact that Penny Dee Limited **could have been** technically insolvent on 1 January 2023 when Skin Group College transferred future liability for the training courses of the claimant and other transferring employees to the Respondent makes no material difference. It does not affect whether the Respondent was contractually authorised to make deductions from the Claimant's final pay."
 - b. As regards the second ground, I clearly set out the evidence upon which I based my finding of fact that the training agreement was incorporated into the employment contract at paragraphs 32.1-32.3 and at paragraph 32.4 in terms of the application and operation of TUPE in any event.
 - c. I made no finding that there had been no novation of Penny Dee Ltd's agreement with the Skin Care College. Paragraph 32.6 records my conclusions in respect of the submissions of the claimant's counsel regarding the respondent not having made payments of the course fees. My findings of fact as to whether and if so, why the respondent was liable to pay such course fees are set out at paragraph 16.
8. Having considered the grounds cited in the claimant's application, I do not consider that they provide any basis on which to revoke or vary the judgment.
9. In light of this, there is no reasonable prospect of variation or revocation of the original decision. The application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
10. In the circumstances the application for a reconsideration of the judgment is rejected on the basis that there is no reasonable prospect of it being varied or revoked.

Employment Judge **Kight**
Date: 20 September 2024

Case No: 2412214/2023

JUDGMENT SENT TO THE PARTIES ON
24 September 2024
FOR THE TRIBUNAL OFFICE