



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON CENTRAL  
**BEFORE:** EMPLOYMENT JUDGE ELLIOTT  
**MEMBERS:** MR D KENDALL  
MR D SHAW

**BETWEEN:**

Mr D Cooke  
Claimant

AND

Provar Ltd  
Respondent

**ON:** 1 November 2024

## **JUDGMENT ON RECONSIDERATION**

The unanimous Judgment of the Tribunal is that the original decision is confirmed and the application for Reconsideration fails and is dismissed.

### **REASONS**

1. By a Reserved Judgment sent to the parties on 11 July 2024 the claims for constructive ordinary unfair dismissal and wrongful dismissal for notice pay succeeded and the claims for disability discrimination, victimisation, whistleblowing detriment and automatically unfair dismissal for whistleblowing failed and were dismissed.
2. On 27 August 2024 the claimant made an application for Reconsideration of the decision on victimisation only.
3. The Judge exercised a discretion to allow the application for Reconsideration out of time, as detailed below.
4. The listing of this Reconsideration hearing took place before a change to the Rules on tribunal composition on 29 October 2024 and took place in

Chambers with the full tribunal. The claimant applied for a Reconsideration hearing. The parties consented to the hearing taking place on the papers.

**The claimant's application for Reconsideration**

5. On 27 August 2024 the claimant made an application for Reconsideration. This application was almost 5 weeks out of time under Rule 71 Employment Tribunal Rules of Procedure.
6. The reasons for this were given as the claimant's ill health and his counsel's unavailability. Although no medical evidence was provided, the tribunal acknowledged the claimant's health condition as detailed within the proceedings and noted that the period in question covered the summer holiday season which helped to explain counsel's non-availability. The Judge granted the claimant's request to extend time for the Reconsideration application for the reasons given. As an appeal was pending a view was also taken that it may help the EAT to know the tribunal's decision on Reconsideration.
7. The three grounds for Reconsideration are the same as those set out in the claimant's appeal to the EAT. The claimant labelled them as Grounds 1, 3 and 3. We have referred to them in chronological order as Grounds 1, 2 and 3.

Ground 1

8. The claimant's position was that the tribunal had misapplied the causative test as to whether the acts of detriment relied upon were done on the ground that the claimant had done a protected act. The protected act in question was his grievance of 31 March 2022.
9. The claimant said that there was "no evidence whatsoever" from the respondent that they intended to act in the manner found by the tribunal, following the protected act. The claimant said that the tribunal failed to ask itself whether the protected act had made a material contribution to the decisions to act in that way.
10. The claimant said that the tribunal took no account, or insufficient account, of what happened subsequently and that the claimant had been warned that raising a grievance would not be good for him and that within days of the grievance an array of serious issues were raised against him.
11. The claimant makes the same point in relation to the decision to announce the return of Mr Clark to the company having previously agreed to delay this and says that the tribunal failed to properly consider whether the protected act played a part.

Ground 2

12. The claimant says that in applying the causative test to the final detriment relied upon, the dismissal, the tribunal erred in law by confusing the respondent's earlier decision to dismiss with the actual dismissal. The claimant submits that if the tribunal had properly applied the correct causation test it would have found the dismissal to be discriminatory.

Ground 3

13. The claimant submits further or alternatively that the judgment is inadequately reasoned as they say there has been no consideration of the respondent's mindset following the protected act.

**The respondent's response to the application**

14. The respondent replied to the application on 24 September 2024.

Ground 1

15. The respondent says that there was "substantial evidence" that the respondent was aware, prior to the protected act of the issues it raised with him subsequent to the protected act. They say that the tribunal did consider whether the detriments were because of the protected act and the reasons why the respondent acted as it did. They say there is no basis for a finding that the respondent's actions were influenced in any way by the allegations of disability discrimination made in the grievance letter.

Ground 2

16. The respondent submits that the tribunal was "at pains to address" the events between the date of the grievance and the claimant's resignation. They say that it had never been argued that the allegations of disability discrimination in the grievance letter, influenced the subsequent actions of the respondent and that there was no evidence that it did.

Ground 3

17. The respondent says that the Written Reasons pass the **Meek** test and that the claimant knows why he lost the victimisation claim.

**Relevant law**

18. Rule 70 of the Employment Tribunal Rules of Procedure 2013 says as follows:

A Tribunal may, either on its own initiative....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.

19. In ***Nagarajan v London Regional Transport 1999 IRLR 572 (HL)*** Lord Nicholls said:

*"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."*

## Conclusions

20. The conclusions are to be read in conjunction with the Judgment sent to the parties on 11 July 2024. Any paragraph numbers set out below refer to the paragraphs in the original decision.

### Ground 1

21. We deal with Detriment 1 at the end due to the dates involved and the timing.
22. Detriment 2 was that of constructing allegations against the claimant following his grievance. Our finding was that the respondent used a sham disciplinary and grievance process as part of its plan to “*part ways*” with the claimant, which they had decided upon by no later than 24 February 2022.
23. In addition, by 24 March 2022, the respondent had made a decision to re-employ Mr Clark and held the meeting on 24 March 2022 to discuss with the claimant, terms for the parting of the ways. There were no other options on the table at that meeting. The disciplinary allegations were used to justify the decision to remove the claimant in favour of appointing Mr Clark. That decision was made in advance of the grievance. We find that the grievance/protected act played no part in the raising of the disciplinary allegations, which were previously held concerns about the claimant in any event. The tipping point as to their concerns about the claimant had been reached on 14 January 2022.
24. Detriment 3 was that of refusing to appoint an independent party to investigate the grievance. Our finding is and was the same as above. The respondent had made the decision to “*part ways*” with the claimant, by no later than 24 February 2022, they wanted to proceed with Mr

Clark's employment, so they saw no reason to delay by appointing an independent investigator. Mr Oliver had been tasked with dealing with the grievance. He was not an HR professional and in March 2022 the respondent had no HR officer in post. We found that in March 2022 Mr Oliver held responsibility HR matters and he thought this made him well placed to deal with the grievance.

25. We find that the respondent was on a path towards achieving their objective of the removal of the claimant in place of Mr Clark. The decision not to appoint an independent party to investigate the grievance was in keeping with the decision that had already been made. They wanted the claimant's removal to take place expeditiously because Mr Clark was ready and waiting and they wanted the benefit of his skills and expertise. Mr Oliver held responsibility for HR and considered that he was best placed to deal with the grievance. It was part of the path to which they were committed from February 2022 onwards and the grievance/protected act played no part in this decision making.
26. Detriment 4 was that of insisting that the allegations and the grievance be considered at a single meeting or, if dealt with separately, the grievance should be considered only after the other matters had been determined. Once again, we find that this was part of the path to which the respondent was committed from February 2022 onwards and the grievance/protected act played no part in this decision making.
27. Detriment 5 was that of approaching the grievance, the allegations and/or the question whether the claimant and Mr Clark could work together, in bad faith. We found that the respondent did not take steps to see whether the claimant and Mr Clark could work together and that the process used was a sham. We find that it was part of the planned exit strategy for the claimant upon which they had decided in February 2022 and which they began implementing with the meeting on 24 March 2022, when a termination agreement was on the table.
28. Detriment 6 was the decision to dismiss. We repeat our finding that this decision was made by 24 February 2022 and that predated the protected act. As above, the respondent began to implement the decision to remove the claimant with the meeting on 24 March which again predated the grievance of 31 March.
29. Detriment 1 relates to the timing of the announcement of Mr Clark's reappointment. The claimant wished this to be delayed while his grievance was ongoing. We found that the original decision to make the announcement was made prior to the grievance of 31 March. The claimant was told about it in the meeting of 24 March 2022. The announcement was made on 6 April after the claimant had lodged his grievance.
30. Our finding was that the reason the respondent did not delay the announcement pending the outcome of the grievance, was because they

already had a binding contract with Mr Clark and they wanted to proceed. They saw no further reason to delay. In any event we find that the grievance process was a sham because the respondent was set on a process towards the removal of the claimant and the reemployment of Mr Clark, all of which had been decided upon prior to 31 March 2022. We find that the grievance letter/protected act played no part in the decision making as to the timing of the announcement. The reason for the timing of that announcement was the respondent's wish to have Mr Clark in post without further delay.

Ground 2

31. The claimant said that in applying the causative test to the dismissal, we erred in law by confusing the earlier decision to dismiss with the actual dismissal. We find that nothing took place to alter the decision made on 24 February 2022 and the steps taken to implement that decision with the meeting on 24 March 2022. We find that the protected act did not change the path upon which they embarked on 24 February. The protected act was not causative of any of the detriments relied upon.
32. It is right, as the claimant says, that we found that Mr Waters told him that "*it would not be good for him*" to raise a grievance as he had done at Barclays. Our finding of fact as to this (paragraph 188) was because the respondent did not wish to get involved in a protracted grievance process, they simply wanted to reach an agreement which resulted in the termination of the claimant's employment.

Ground 3

33. We have set out additional reasoning above.

**Conclusions**

34. For the reasons set out above the original decision is confirmed and the application for Reconsideration fails.

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**Employment Judge Elliott**  
**Date: 1 November 2024**

Judgment sent to the parties and entered in the Register on: 6 November 2024  
\_\_\_\_\_ for the Tribunal