EMPLOYMENT TRIBUNALS

Claimant: Mr C Mallon

Respondent: Surface Transforms PLC

RECONSDERATION JUDGMENT

The claimant's application dated 30 October 2024 for reconsideration of the judgment sent to the parties on 30 October 2024, is refused.

REASONS

The Law

1. 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).

2. Rule 72(1) of the 2013 Rules of Procedure empowers the refusal of an application for reconsideration based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

3. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

   "the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily".

4. In common with all powers under the 2013 Rules, 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. Achieving finality in litigation is part of a fair and just adjudication.

Discussion of the Grounds in this application

5. The claimant's reconsideration application identifies four numbered grounds upon which reconsideration is sought. Some of these are broken into discrete sub-grounds. In addition, there are then further grounds set out by the claimant beyond the numbered grounds.

6. In support of these grounds the claimant has relied on a significant number of authorities, with full citations. The claimant has not provided any detailed explanation of the relevance of many of these authorities. Whilst seeking to access these authorities to assess whether and how they are relevant to the claimant's application, it has proved impossible to locate some of them. In the reasons below such authorities are identified as '*Not Found'*.

7. For each '*Not Found*' authority a search was done by reference to the citation given and using just the parties' names, to ensure the difficulty was not just an error in the citation given.

8. **Ground 1: Incorrect Application of the Burden of Proof**

   8.1. The claimant's application for reconsideration is misleading in that it selectively refers to part of the reasons given without context. The reasons explicitly state that "*all evidence should be heard at once before a two-stage analysis of that evidence is applied*" (Paragraph 4.4).

   8.2. The earlier statement that "*It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages*" refers to the fact that the evidence does not need to be heard in two stages. This is clear when the relevant parts of the judgment are read as a whole.

   8.3. Accordingly, reconsideration on this ground is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

9. **Ground 2: Errors in Assessment of Reasonable Adjustments**

   This ground is broken into sub-grounds by the claimant, which are discussed in turn below.

   Ground 2(a): Failure to Consider Claimant's Specific Needs

   9.1. The claimant has referred in this section of his application for reconsideration to two case authorities:

   - ***Environment Agency v Rowan* [2008] ICR 218**; and
   - ***HM Land Registry v Benson* [2018] UKEAT/0141/17** (Not Found).

9.2. The claimant states that ***Environment Agency v Rowan*** is authority for the proposition that "*employers must consider an employee's preferred adjustments*."

9.3. Having read the judgment, it is not clear which part of the reasoning of the EAT is relied on to support this assertion. This does not appear to be a reasonable conclusion that can be reached from the decision of the EAT. Insofar as it relates to disability discrimination, the decision of the EAT appears to have been based on a finding that the Employment Tribunal had failed to provide an adequate explanation for the conclusions reached.

9.4. ***HM Land Registry v Benson*** **[2018] UKEAT/0141/17** could not be found. The citation given by the claimant (UKEAT/0141/17) is for a case with different parties regarding costs (*A Haydar v Pennine Acute NHS Trust* [[2018] UKEAT/0141/17). There is an authority with the parties *HM Land Registry v Benson*, but that has the citation UKEAT/0197/11, and the authority relates to a claim of age and sex discrimination. It is not clear, on this basis, how that claim could ever provide relevant authority regarding the duty to make reasonable adjustments, which is exclusively only applicable to disability discrimination.

9.5. Accordingly, reconsideration on the ground that there was a failure to consider claimant's specific needs is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

Ground 2(b): Incorrect Focus on Success Rather Than Disadvantage

9.6. The claimant contends that the Employment Tribunal "*erroneously focused on whether the Claimant would have been successful in the application process rather than whether the PCP created a substantial disadvantage.*"

9.7. The requirement for there to be a substantial disadvantage is a fundamental part of the relevant legal tests. Accordingly, it was fully considered and discussed.

9.8. The Employment Tribunal then went on to discuss the other relevant parts of the legal tests, finding that an adjustment was offered which the claimant refused to engage with on the basis of a dishonest pretext. The Employment Tribunal found that his this adjustment would have enabled the claimant to fully explain his application before it was, inevitably, rejected.

9.9. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Leeds Teaching Hospitals NHS Trust v Foster [2011] IRLR 498****; and*
- ***Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664****.*

9.10. The claimant has cited ***Tarbuck v Sainsbury's Supermarkets Ltd*** on the basis that this authority emphasizes focus should be on the disadvantage

itself. The claimant has given no indication of which part of the reported case contains this emphasis.

9.11. The authority, insofar as it relates to a claim of discrimination by failure to make reasonable adjustments, appears to relate to whether there is a duty to consult with an employee, such that a failure to consult is itself discrimination. This does not appear to be relevant to this claim.

9.12. The claimant states that ***Leeds Teaching Hospitals NHS Trust v Foster*** is authority for the proposition that "*success*" is not the primary consideration when looking at whether the claimant has encountered a substantial disadvantage.

9.13. The claimant again gives no indication of what part of the discussion in that case is argued to support that contention. It is correct that this case states that all that is needed for a disadvantage is "*a prospect*" of success. The strength of that prospect is not relevant.

9.14. The reasons in this claimant's case make it clear that the Employment Tribunal found that the claimant did not have "*any chance whatsoever of securing the position he applied for, regardless of the application process followed*". This clearly explains the finding that the claimant had no prospect at all. There was no assessment of the strength of his prospects of success.

9.15. Accordingly, reconsideration on the ground that there was an incorrect focus on success rather than disadvantage is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

Ground 2(c): **Failure to Consider Alternative Adjustments**

9.16. The claimant seeks a reconsideration on the ground that the Employment Tribunal failed to consider alternative adjustments.

9.17. The decision in the claimant's claim was based on a finding that an adjustment was offered which the claimant refused to engage with on the basis of a dishonest pretext. The Employment Tribunal found that this adjustment would have enabled the claimant to fully explain his application before it was, inevitably, rejected.

9.18. The offered adjustment was found to fully meet the respondent's duty to make reasonable adjustments for the claimant. As such, the respondent had no further obligation to consider whether other adjustments could have been considered that the claimant would not refuse to engage with.

9.19. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Smith v Churchills Stairlifts plc [2006] IRLR 41***; and

- ***Archibald v Fife Council [2004] IRLR 651***.

9.20. The claimant states that the authority of ***Smith v Churchills Stairlifts*** "*emphasizes the continuing nature of the duty to consider adjustments".* The claimant does not explain why this would be relevant to the decision in his claim. There was no finding that the duty to make reasonable adjustments was not continuing, the finding was that the duty to make reasonable adjustments was complied with.

9.21. The claimant states that ***Archibald v Fife Council*** establishes the breadth of the duty to make adjustments. Again, that does not appear to be a point that is relevant in the claimant's case. The finding of the Employment Tribunal was that a reasonable adjustment was offered, and the only reason the claimant did not utilise that adjustment to remove the disadvantage was his desire to be able to make this claim. The fact that there may have been different adjustments, that the claimant would not have refused to engage with, that could equally have addressed the stated disadvantage is not relevant.

9.22. Accordingly, reconsideration on the ground that there was a failure to consider alternative adjustments is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

10. **Ground 3: Errors in Assessment of Harassment**

The claimant's application for reconsideration on this ground is divided into two sub grounds:

Ground 3(a): The judgment required *"evidence that the comments complained about had any particular effect"* (paragraph 10.5.3)

10.1. This ground appears to be based on an incomplete reading of the Employment Tribunal decision.

10.2. Paragraph 10.5.3 of the reasons provided to the claimant explains that to make a finding that conduct has had the effect of harassing the claimant would require evidence of that effect. That is clearly correct.

10.3. The reasons go on to explain that the Employment Tribunal considered both whether the treatment the claimant refers to had the purpose of harassing him, and also, or in the alternative, whether it had the effect of harassing him. The Employment Tribunal's reasoning in relation to these points is set out at paragraphs 10.5.1 to 10.5.5.

10.4. The conclusion reached was:

10.4.1. that the claimant had presented no evidence regarding any effects of the alleged harassment, so no factual finding of an effect could be found; and

10.4.2. that the claimant had presented no evidence that could support a finding that the alleged harassing acts had the required purpose, so no finding that there was such a purpose was made.

10.5. In the absence of a finding of either the relevant purpose or the relevant effect, no claim of harassment can succeed. For this reason, the claimant's harassment claim failed.

10.6. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Richmond Pharmacology v Dhaliwal [2009] IRLR 336***; and
- ***Langstaff v Needham Market Middle School [2011] UKEAT/0542/10*** (Not Found).

10.7. The claimant has given no indication of which parts of ***Richmond Pharmacology v Dhaliwal*** are relied on.

10.8. The authority of ***Langstaff v Needham Market Middle* School** has not been found.

10.9. Regardless, the legal principle that the claimant suggests that these authorities support is a correct principle, and it is entirely consistent with the approach taken by the Employment Tribunal in this case.

10.10. Accordingly, reconsideration on the ground that the judgment required *"evidence that the comments complained about had any particular effect"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

Ground 3(b): The Tribunal applied an incorrectly high threshold by requiring language to be "*serious and marked*."

10.11. "*Serious and marked*" is the language taken from the authorities as set out in paragraphs 3.4 to 3.6 of the judgment reasons. As such, it does not appear that there is any error of law that would justify a reconsideration because these words were referred to.

10.12. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Pemberton v Stockton on Tees Borough Council [2016] IRLR*** *266* (Not Found); and
- ***Insitu Cleaning Co Ltd v Heads [1995] IRLR 4***.

10.13. ***Pemberton v Stockton on Tees Borough Council***, which appears to be a relatively recent case, could not be found.

10.14. The claimant states that ***Insitu Cleaning Co Ltd v Heads*** in an authority that emphasises "*a broader approach to harassment*". The claimant gives no indication of which part of this authority provides this emphasis. Having read this authority, such an emphasis was not obviously apparent. The authority provides guidance that a single remark is capable of amounting to harassment and reaffirmed the long standing principle that whether a remark is sufficient to amount to harassment is a matter of fact and degree. That is entirely consistent with the approach taken in this case as explained in the judgment reasons.

10.15. Accordingly, reconsideration on the ground that the Tribunal applied an incorrectly high threshold by requiring language to be "*serious and marked*" is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

11. **Ground 4: Procedural Irregularities and Treatment of Evidence**

The claimant's application for reconsideration on this ground is divided into two sub grounds:

Ground 4(a): the judgment shows *"insufficient consideration of the Claimant's disability in the hearing process itself."*

11.1. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Vicary v British Telecommunications plc [1999] IRLR 680*** (Not Found); and
- ***First Great Western Ltd v Tame [2009] IRLR 949***.

11.2. The authority of **First Great Western Ltd v Tame** could not be found.

11.3. The claimant states that **Vicary v British Telecommunications plc** is authority that there has to be consideration of disability in Employment Tribunal procedures. The claimant gives no indication of where in that authority this is discussed. There does not, however, appear to be any discussion in this authority about adjustments being made during an Employment Tribunal hearing. The authority appears to focus on what constitutes a normal day to day activity, and whether in the assessment of impacts on normal day to day activity the Employment Tribunal should focus on what the claimant can do or what the claimant cannot do. This appears to be a well-established principle that was not relevant to this the claimant's claim, where there was no dispute that he is disabled.

11.4. The claimant has provided no explanation of in what way it is contended that there was insufficient consideration of his disability in the Employment Tribunal hearing, hearing process itself, other than naming these authorities.

11.5. Accordingly, reconsideration on the ground that the judgment shows *"insufficient consideration of the Claimant's disability in the hearing process itself"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

Ground 4(b): The treatment of evidence mirrors concerns raised in several EAT cases involving the same Employment Judge.

11.6. The claimant has referred, in support of this ground for his application for reconsideration, to three authorities:

- ***Chindove v William Morrison Supermarket [2014] UKEAT/0043/14***;
- ***Poullis v Tesco Stores Ltd [2014] UKEAT/0167/14*** (Not Found); and
- ***Tattersall v Fergusons Transport Ltd [2012] UKEAT/0028/12*** (Not Found).

11.7. The claimant states that ***Chindove v William Morrison Supermarket*** resulted in "*criticism of inadequate explanation of evidence treatment*". The claimant has not explained what part of the judgment included that criticism.

11.8. The authority was an appeal against a finding that the claimant had not be constructively dismissed. In the absence of any explanation, it is not clear how this authority any way supports the claimant's contention in his application for reconsideration that there was any irregularity in his hearing.

11.9. The claimant has not identified any particular irregularity. It is unlikely that there is any salaried Employment Judge that will not at some point be successfully appealed. The mere fact that there has been such an appeal cannot, and does not, form a valid ground to reconsider a decision by the same judge reached a decade later in a different type of claim altogether.

11.10. The authorities of ***Poullis v Tesco Stores Ltd*** and ***Tattersall v Fergusons Transport Ltd*** could not be found. The claimant does not explain the principles established in these cases, other than stating "*Procedural irregularities"* and *"inadequate consideration of reasonable adjustments"* respectively.

11.11. Accordingly, reconsideration on the ground that the "*treatment of evidence mirrors concerns raised in several EAT cases involving the same Employment Judge"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

12. **Further Grounds 1: "*Recent Judicial Recognition*"**

12.1. The claimant's application for reconsideration continues under the heading "*Recent Judicial Recognition*".

12.2. The claimant refers, in this part of his application for reconsideration, to the "*Employment Judge's own postscript dated 30 October 2024*", which he asserts:

"*acknowledges potential errors in the original judgment, specifically noting:*
- *Insufficient consideration of the Claimant's disability*
- *Inadequate examination of the reasonable adjustments duty*
- *Over-emphasis on the Claimant's experience at the expense of considering adjustments".*

12.3. It is not clear what the claimant is referring to. No postscript has in this case, or indeed in any case ever, been produced by Employment Judge Buzzard. The date that the claimant suggests such a postscript was produced was in fact in the middle of a week when Employment Judge Buzzard was on annual leave and no judicial work of any type was done.

12.4. The date given by the claimant for the postscript appears to be the date upon which Employment Tribunal administration sent the judgment to the claimant. The email sent has been checked and there is no part of it or any attachment (including the judgment) that the claimant could reasonably have understood to be a postscript generated by Employment Judge Buzzard.

12.5. Given Employment Judge Buzzard has not produced any such postscript, there can be no basis for reconsideration that relies on such a non-existent postscript.

12.6. Accordingly, reconsideration on the ground titled by the claimant "*recent judicial recognition"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

13. **Further Grounds 2: "*Postscript to application for Reconsideration*"**

13.1. In this part of the claimant's application for reconsideration he sites a number of additional authorities that *"reinforce the grounds for reconsideration"*. These are broken into subsections.

Further Grounds 2.1: "*On Reasonable Adjustments in Assessment Processes*"

13.2. The claimant has referred, in support of this ground for his application for reconsideration, to two authorities:

- ***Government Legal Service v Brookes [2017] UKEAT/0302/16***; and

- ***Price v Action-Tec Services [2013] UKEAT/0158/13*** (Not Found).

13.3. The claimant states that in ***Government Legal Service v Brookes*** the following points were made by the EAT:

- *The EAT upheld that requiring a Situational Judgment Test in a fixed multiple-choice format disadvantaged an autistic candidate*
- *Particularly relevant as it established that assessment methods themselves must be adjusted for neurodivergent candidates*
- *The EAT emphasized that alternative assessment methods must be considered even in highly competitive recruitment processes*

13.4. It is not clear how any of these points could form a ground for reconsideration in the claimant's case. The claimant was not required to undertake a multiple-choice test of any type and a reasonable adjustment to the normal recruitment process was offered.

13.5. Accordingly, the points made in this authority that the claimant has identified appear not to be of any significant relevance to the claimant's case.

13.6. *The claimant states that in* ***Price v Action-Tec Services*** the following points were made by the EAT:

- *The EAT held that focusing on written communication skills without considering alternative assessment methods potentially discriminated against a dyslexic candidate*
- *Particularly relevant to my case regarding the written application process*

13.7. This authority could not be found. An authority with the parties of **Price v Action-Tec Services** was found, but it was a first instance decision about associative disability discrimination. There is a case with the citation given by the claimant (*[2013] UKEAT/0158/13),* but the parties are ***Hickford v Commissioners for HM Customs and Revenue.*** That case was about whether the claimant was disabled, which is not the issue in the claimant's claim.

13.8. Accordingly, reconsideration on the ground titled by the claimant as *"On Reasonable Adjustments in Assessment Processes"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

13.9. **Further Grounds 2.2: "*On the Assessment of Impact*"**

13.10. The claimant has referred, in support of this ground for his application for reconsideration, to the authority of ***Taiwo v Olaigbe*** **[2016] UKSC 31**.

13.11. The authority cited is a claim of race discrimination. It does not appear to be a case that relates to the issue the claimant refers to, namely "*whether a*

PCP created a barrier, not whether removing it would have led to success". For this reason, contrary to what the claimant says in his reconsideration application this authority does not support his argument that the Tribunal's "*excessive focus*" on whether he would have succeeded in obtaining the role suggests a ground for reconsideration.

13.12. The Employment Tribunal did not focus on this point. It was one point considered. The claimant's claim to which this point related, failed for multiple discrete reasons, including that an adjustment was offered that addressed the disadvantage the claimant identified which he refused to engage with on a dishonest pretext that he could not engage with it.

13.13. Accordingly, reconsideration on the ground titled by the claimant as *"On the Assessment of Impact"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

13.14. **Further Grounds 2.3: *"On Procedural Fairness"***

13.15. The claimant has referred, in support of this ground for his application for reconsideration, to the authority of ***Rackham v NHS Professionals Ltd [2015] UKEAT/0110/15***.

13.16. The claimant correctly states that this authority gives emphasis to the need for Employment Tribunals to ensure their own procedures do not disadvantage disabled litigants, which would include neurodivergent litigants. The claimant does not, however, provide any explanation of in what way he says that there was a failure to take into account his disability in the hearing of this claim that would justify reconsideration. As such, the claimant's application for reconsideration on this ground is no more than an abstract statement of a legal principle without any reference or connection to this claim or hearing.

13.17. The claimant is a very experienced litigant, fully aware that if he needed an adjustment to the tribunal hearing process he could ask for such an adjustment. No request for any adjustment was made.

13.18. Accordingly, reconsideration on the ground titled by the claimant as *"On Procedural Fairness"* is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

Further Grounds 2.4: *"On Previous Decisions by Employment Judge Robinson"*

13.19. The claimant's application for reconsideration on this ground is confusing. It is not clear why the claimant has singled out Employment Judge Robinson and his previous decisions. Employment Judge Robinson took no part in the hearing of this claim.

13.20. The claimant purports to provide a list of cases where Employment Judge Robinson's decisions have been overturned by the EAT *"on similar grounds"*. These cases are discussed in turn below.

13.21. ***Baldeh v Churches Housing Association*** **[2019] UKEAT/0290/18**

13.21.1. This authority relates to a decision by Employment Judge Dean, not Employment Judge Robinson, or Employment Judge Buzzard. That being noted, the EAT decision is in part in relation to whether that claimant's style of communication arose from their disability. It does not however relate to a claim of failure to make reasonable adjustments, it is in the context of a claim of discrimination arising from disability.

13.21.2. The issue of the claimant's communication style in this claim only related to his claim of harassment, not his claim of discrimination by failure to make reasonable adjustments as the claimant's reconsideration application suggests.

13.21.3. The authority does not appear to assist the claimant in any event. In the present claim the decision was that that the claimant's evidence about his communication with the respondent was unreliable. Accordingly, it is not correct to assert, as in the cited authority, that the Employment Tribunal failed to take into account evidence about the claimant's communication.

13.21.4. Further, the claimant's harassment claim was dismissed on each and every relevant legal test, not just on the basis that the alleged harassment did not relate to his disability.

13.22. ***MacKenzie v University of Cambridge*** **[2019] UKEAT/0222/18**

13.22.1. The citation given by the claimant could not be located. There is a claim in the Employment Tribunal with the parties of ***MacKenzie v University of Cambridge*** that has been appealed and considered by the Court of Appeal in 2019. That appeal, however, related solely to the scope of the right to reengagement after an unfair dismissal, not to discrimination.

13.22.2. There does not appear to be any involvement from Employment Judge Robinson, or Employment Judge Buzzard in this long running litigation.

13.22.3. There does not appear to be any issue related to a complaint about discrimination by failure to make reasonable adjustments in that claim. No reference can be found in the case report that the count considered, as the claimant suggests, "*the need to consider cumulative impact of disadvantages".*

13.22.4. Accordingly, it is not clear why this authority is cited or what relevant principle it contains that would in any way relate to the claimant's claim or support an application for reconsideration.

13.23. ***City of York Council v Grosset*** **[2018] EWCA Civ 1105**

13.23.1. This is an appeal against a judgment of Employment Judge Forrest, not Employment Judge Robinson as the claimant asserts, or Employment Judge Buzzard.

13.23.2. The claimant incorrectly asserts that this authority is a case which resulted in the overturning of a decision by the higher courts. In fact, in that case, the decisions of the Employment Tribunal and the EAT were upheld by the Court of Appeal, they were not overturned.

13.23.3. The decisions did not, as the claimant suggest, emphasize "*the importance of considering how disability affects decision-making and communication".* The appeal related to whether a respondent had to be aware, in a claim of discrimination arising from disability, that the cause of the unfavourable treatment was in fact something arising from disability. The Employment Tribunal, EAT and Court of Appeal all confirmed that this is an objective test, not a subjective one.

13.23.4. It is not clear how that in any way relates to the claimant's claim, and the claimant has not explained how it relates. The claimant did not claim discrimination arising from disability in this claim.

13.24. Accordingly, reconsideration on the ground titled by the claimant as *"On Previous Decisions by Employment Judge Robinson"* is refused, it appears to be confused and irrelevant to the claimant's claims. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

14. **Final Ground:** ***Khorochilova v Euro Rep Limited*** **[2023] EAT 65**

14.1. The claimant states in his reconsideration application that this authority:

> "*specifically addresses the duty of tribunals to actively consider whether their own processes might disadvantage disabled litigants, even where specific adjustments have not been requested. This is particularly relevant given the difficulties I experienced in presenting my evidence during the hearing."*

14.2. Despite a careful reading of this authority, no part of it appears to relate in any meaningful way to the conduct of tribunal hearings and the need to adjust how hearings are conducted. The appeal appeared to relate solely to

a consideration of whether the Employment Tribunal had properly considered all the evidence before it relating to whether the claimant was disabled, and it was found they had done so in reaching their conclusion that the claimant was not disabled.

14.3. Without being able to find the part of the EAT decision that makes the points the claimant suggests, it is hard to understand what relevance this authority has.

14.4. That being noted, the point of principle the claimant makes is correct. The claimant is a very experienced litigant, fully aware that if he needed an adjustment to the tribunal hearing process, he could ask for such an adjustment. No request for any adjustment was made.

14.5. The claimant has not identified or explained what adjustments he believes should have been made, even though they were not requested. As such, it is very difficult to understand this ground.

14.6. The claimant's evidence was relatively brief, and he did not appear to be struggling save at those points where he was found to be selectively evasive. The finding of the Employment Tribunal was that this only occurred at points where his claim was being undermined by evidence, and that it was deliberate and strategic. In the context of the claimant's evidence being found to be dishonest, all relevant adjustments and allowances were made.

14.7. Accordingly, reconsideration on the ground that the Employment Tribunal failed to make unidentified adjustments to the hearing is refused. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

15. For the reasons set out above, the claimant's application for reconsideration is refused in its entirety.

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Employment Judge Buzzard
27 November 2024

JUDGMENT SENT TO THE PARTIES ON
3 December 2024

FOR THE TRIBUNAL OFFICE