



EMPLOYMENT TRIBUNALS

Claimant: Mr David Brown
Respondent: Evergreen Irrigation Ltd

JUDGMENT

The respondent's application dated **28 December 2024** for reconsideration of the judgment sent to the parties on **17 December 2024** is refused.

REASONS

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

- (i) As the Employment Appeal Tribunal observed in **Ebury Partners UK Ltd v M Acton Davis** [2023] EAT 40 (at paragraph 24)

The employment tribunal can ... 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.

- (ii) At paragraph 27, the Employment Appeal Tribunal observed that the Employment Judge having

reached a new conclusion based entirely on material which was before him at the time of his original judgment, ... is certainly not generally considered a good ground for reconsidering a judgment.

- (iii) Both parties had fair opportunity to put their case on the issues of reductions for contributory conduct and Polkey at the hearing and did so. In particular, the

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Respondent made similar points in closing submissions as are made in the application for reconsideration.

- (iv) A reduction in compensation for contributory conduct requires that conduct to be culpable or blameworthy. No such conduct was found by the Tribunal.
- (v) The judgment records at paragraph 64 that the Claimant was at fault for the accident but this was not incompetence or gross negligence. At paragraph 37, the judgment records that if there was a written procedure regarding the reporting of accidents, the Claimant was not aware of it. At paragraph 26, the judgment records that the Claimant didn't think he needed to report the accident to the Respondent's office because the driver of the other vehicle had done so but with hindsight he realised he should have done.
- (vi) The finding of the Tribunal at paragraph 70 was that this was not culpable or blameworthy conduct such that it was just and equitable to reduce the basic award or the compensatory award.
- (vii) Paragraph 68 of the judgment records that there is insufficient evidence to support a finding that the Claimant would have committed later misconduct such that he would have been dismissed later.
- (viii) It is correct that paragraph 67 records two recent incidents that could be described as misconduct. However, it would be speculative to suggest that the Claimant would commit **further** misconduct.

Approved by:

Employment Judge Taft

Date 10 January 2025

JUDGMENT SENT TO THE PARTIES ON

17 January 2025

FOR THE TRIBUNAL OFFICE