Case Numbers:1304066.23 &
13005064.24

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Mr Lugard	Sodexo Ltd

AND

APPLICATION FOR A RECONSIDERATION

In exercise of the powers conferred upon me by Rule 70(1) of the Employment Tribunal Procedure Rules 2024 (the Rules), I refuse the application for a reconsideration by the claimant because I consider that there is no reasonable prospect of the judgment being varied or revoked under Rule 68.

REASONS

1 A judgment was sent to the parties on 16 December 2024. By letter dated 24 December 2024 the claimant seeks a reconsideration of the judgment.

2 Rules 68 - 70 of the Rules provide (in so far as is relevant) as follows:

> 68(1) A Tribunal may ……. on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.
> (2) A judgment under reconsideration may be confirmed, varied or revoked.
> (3) If the judgment under reconsideration is revoked the tribunal may take the decision again. In doing so, the tribunal is not required to come to the same conclusion.
>
> 69 Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why the reconsideration is necessary and must be sent to the tribunal within 14 days of the later of –
> (a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or

(b) the date that the written reasons were sent, if these were sent separately.

70(1) The Tribunal must consider any application made under rule 69.

(2) If the tribunal 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 A judgment is defined in Rule 2(1) as being;

A decision, made at any stage of the proceedings…. which finally determines;

(a) A claim, or part of a claim, as regards liability, remedy or costs.

4 In **Outasight VB Ltd v Brown UKEAT/0253/14** it was explained that the change in the wording of the 2013 Rules (and in particular the removal of the specific categories which were contained at Rule 34(3)(a) – (e) of the 2004 Rules and the replacement of these by a consideration of what is in the interests of justice) does not signify a change in approach. The same basic principles applied to the 2013 Rules as under the 2004 Rules and cases decided under the old Rules were still relevant to cases under the new. Given that the same wording has been used in the 2024 Rules as under the 2013 Rules, it can be taken that this position remains unchanged.

5 As was explained in **Ebury Partners UK Ltd v Acton Davis [2023] IRLR 486** an Employment Tribunal can only reconsider a judgment if it is necessary in the interests of justice to do so. A central aspect of the interests of justice is that there should be finality in litigation. The interests of justice include not only the interests of the person seeking a reconsideration, but also the interests of the person resisting a reconsideration on the grounds that once the hearing which has been fairly conducted is complete, that should be the end of the matter. There are also the interests of the general public in finality of proceedings of this kind. Considerable weight must be given to the public interest in the finality of judicial decisions, both to protect the opposing party and to avoid overburdening the employment tribunal system, **Phipps v Priory Education Services Ltd [2023] EWCA Civ 652.**

6 For these reasons it is unusual for a party to be "given a second bit of the cherry", and the jurisdiction to reconsider should be exercised with caution, paragraph 24, **Ebury**. The jurisdiction should not be invoked to correct a supposed error made by the tribunal after the parties have had a fair opportunity to present their case on the relevant issue. In particular it is unlikely to be a good ground for a reconsideration for a tribunal to be invited to reach a new or different

conclusion on an issue based entirely on material that was before the tribunal at the time they made their original decision, **Ebury**.

The Application

7 The claimant submitted an 8 page letter along with 8 attachments. The following points require to be made:

7.1 The 8 attachments are all documents that were in the main hearing bundle. Two of them are headed "list of ill treatments", pages 656 - 659 of the hearing bundle. The claims being pursued in the first claim were confirmed with the claimant by EJ Power at the case management preliminary hearing on 28 November 2023. The list of claims was confirmed again by the tribunal with the claimant at the start of the full hearing. The claims determined by this tribunal were both consistent with this list and what was contained in the first claim form. The claims that the claimant was permitted to pursue under the second claim was decided by EJ Gidney at the preliminary hearing on 23 July 2024. Whilst the list of ill treatments, page 658, makes reference to whistleblowing, constructive dismissal and breach of contract, EJ Gidney struck these claims out.

7.2 The other 6 attachments were considered by the tribunal during the course of the hearing and, where relevant, findings were made based on or about those documents. For example the document headed Exhibit 2 appeared in the bundle at page 148, and findings of fact were made about that document (to the extent it was relevant), see paragraph 22.44 of the written reasons.

7.3 The claimant's 8 page letter quotes from both documents that were in the bundle and parts of the claimant's witness statement. The claimant is simply repeating evidence that was before the tribunal and asking for a different decision to be taken.

7.4 It is not appropriate in a reconsideration application to seek to change/re-open findings of fact/conclusions which have been made on the basis of evidence that was before the tribunal, and which evidence has already been considered by it. That is wholly against the principle of finality of litigation.

9 I therefore conclude after preliminary consideration that I shall refuse the claimant's application for a reconsideration of the judgment. For the reasons set out above there is no reasonable prospect of the decision being varied or revoked and it is not in the interests of justice for a reconsideration to be conducted.

Employment Judge Harding
Approved on: 14 January 2024