



EMPLOYMENT TRIBUNALS

Claimant: Mr Damian Marshall

Respondent: LIDL Great Britain LTD

JUDGMENT

The Claimant's application of 14 December 2024 for reconsideration of the judgment sent to the parties on **5 December 2024** is refused.

REASONS

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

Having read the lengthy and detailed submission with great care, I have asked whether, were I to reconsider the judgement there would be any reasonable prospects of the original decision being varied or revoked.

I understand that the Claimant was disappointed with my decision that he was not constructively and unfairly dismissed.

However, having reviewed his application and having reviewed the reasons for the judgement I reached and taking into account guidance from the higher courts as to the circumstances in which a reconsideration will be necessary in the interests of justice, there is no reasonable prospect of the original decision being varied or revoked and I therefore refuse the application for a reconsideration.

I remind myself of the legal principles I must apply as set out within rules as follows

1. The application for reconsideration is made under rule 70 of the Tribunal Rules 2024. The process under rule 70(2) is for the Judge who chaired the

full tribunal to consider the application and determined, first of all, whether he or she considers that there is no reasonable prospect of the original decision being varied or revoked. If the judge is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.

2. Under rule 70 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.
3. For the reasons I will set out below I do not consider that there is any reasonable prospect of the original decision in this case being varied or revoked and, therefore, I refuse the application for reconsideration.
4. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “*An Employment Tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17 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; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here*”
5. Reconsiderations are thus best seen as limited exceptions to the general rule that Employment Tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry. In *Stevenson v Golden Wonder Ltd* 1977 IRLR 474, EAT, Lord McDonald said of the old review provisions that they were ‘not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before’.
6. In this case I have therefore considered why the Claimant says it is in the interests of justice for the judgment to be reconsidered.
7. The Claimant has made comments about a number of matters which were considered by the Tribunal, and about which the Claimant himself gave evidence and cross examined the Respondent witnesses.

8. Other matters are ones which were specifically addressed within the judgment given to the parties.
9. The following are by way of example.
 - 9.1. The case of *Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA*, was referred to and relied upon by the judge, and applied to findings of fact made.
 - 9.2. The claimant did not refer to the case of *Gogay v Hertfordshire County Council 2000* during the hearing, but the tribunal made findings in respect of suspension in this case, and there was no evidence before the court that this was a knee jerk reaction.
 - 9.3. The Claimant has set out a statement about systematic pattern of earlier breaches. He sets out an analysis of evidence which was either before the Employment Tribunal or which could have been before the Employment Tribunal.
 - 9.4. The Claimant is critical of the Respondent's response, again making observations which either were or could have been the subject of cross examination during the course of the hearing or the subject of the Claimant's own witness statements.
 - 9.5. The Claimant is critical of his suspension. This was a matter which was considered by the Employment Tribunal and upon which the Claimant and the Respondent witnesses gave evidence, and in respect of which findings of fact were made by the employment tribunal. No new evidence has been provided.
 - 9.6. The Claimant refers to how other cases were handled. This was a matter before the Employment Tribunal and findings of fact were made in respect of it. The Claimant has provided significant additional detail which he could have provided at the hearing or used as the basis for questioning the Respondent. These are not new matters.
 - 9.7. The Claimant asserts there was difference in his treatment and treatment of others and again these are matters which were raised before the Employment Tribunal and considered, and in respect of which findings of fact were made and conclusions were drawn. These are not new matters.
 - 9.8. The Claimant raises concerns about Mr Richard Russell and suggests there were violations of the ACAS guidelines on suspension. The points which he makes are all points which he either made before the employment tribunal, or which he could have made either by including them within his witness evidence or by asking the Respondent questions in cross examination, or in his submissions to the employment tribunal. It is not suggested by the Claimant that these are new matters.
 - 9.9. The Claimant raises concerns about privacy and data. He refers to Article 8 of the Human Rights Act 1998, and now asserts that the messages in question were private communications on a personal device. He suggests

that there was a breach of UK privacy law. These were matters which he either raised and canvassed before the Employment Tribunal or which he could have raised or canvassed.

- 9.10. The Claimant suggests there were fundamental flaws in the investigation. Again, these are matters which he either raised before the Employment Tribunal or could have raised before the employment tribunal. All of these matters are ones about which he was fully aware at the point that he filed his claim to the employment tribunal; at the point of case management and at the hearing itself.
- 9.11. The Claimant makes a number of comments about witness credibility. These are the sorts of issues which the Claimant could have raised, and had every opportunity to raise, during the course of the hearing, through cross examination or through making closing submissions.
- 9.12. The tribunal considered as appropriate the credibility of the witnesses and made specific findings of fact about the evidence that had been provided. In particular, specific findings were made in respect of the relevance and importance of the error in respect of the suspension letter.
- 9.13. The Claimant suggests health and safety violations. It is unclear what is meant by this, but the Claimant is not suggesting that he has come across new evidence or that he did not know these matters at the point that he filed his claim or the point of the hearing.
- 9.14. This is also true for the comments he makes in respect of suggestions that there were dangerous reductions in staffing level.
- 9.15. He sets out a number of matters under *Evidence Of Retaliation* stating that he had submitted formal reports of misconduct and comparing the way those allegations were dealt with, with how he was dealt with when he was subjected to disciplinary action. He does not suggest the tribunal did not deal with these matters and in fact the tribunal made findings of fact in respect of them. The Claimant had every opportunity to raise these matters during the course of the hearing and did so.
- 9.16. The Claimant makes further submissions about the reason why he resigned from his employment. The tribunal has made findings of fact on the basis of the evidence before it, and the Claimant does not suggest that those findings were made in error or that there is new or different evidence for example which the tribunal should have taken into account.
- 9.17. The Claimant states that he earnestly requests that I consider my reconsider my judgement in the light of the comprehensive evidence and the human cost it represents. The pattern of behaviour demonstrated by his employer, he says, would make continued employment untenable. He not suggest that that the decision was wrongly made, on the basis of the evidence, or as a result of an administrative error for example or that new evidence which he could not reasonably have known about at the of the hearing has become available since the conclusion of the tribunal hearing.

- 9.18. The basis of his application is that he considers the judgment is wrong, and that I should reconsider it, in the light of his further submissions and arguments.
- 9.19. Whilst I do not criticise the Claimant, who appeared as litigant in person before me, for making the application, he is in reality asking for a second attempt to satisfy the tribunal of the unfairness of his dismissal. Were I to reconsider, it would be a further hearing on the same evidence. This is not, as set out above, the proper use of the reconsideration process.
- 9.20. I am satisfied that there is no reasonable prospect of the original judgment being varied or revoked and the application for reconsideration is therefore refused.
- 9.21. I conclude that it is not in the interests of justice for me to reconsider the judgment, and decline to do so.

Decision approved by Employment Judge Rayner

Date 27 January 2025

JUDGMENT SENT TO THE PARTIES ON

28 January 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE