



# EMPLOYMENT TRIBUNALS

**Considered at:** London South

**By:** Employment Judge Tueje

**Claimant:** Noel Agabi  
**Respondent:** Brigit's Afternoon Tea Limited

**Date of reconsideration:** 19<sup>th</sup> February 2025

## **JUDGMENT ON RECONSIDERATION**

1. The claimant's request for reconsideration is refused, and the Tribunal's judgment in respect of the preliminary issue is confirmed.

## **REASONS**

2. There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.

## **BACKGROUND**

3. The respondent is a bakery and bus tour operating company. Between 21st July 2023 and 3rd March 2024, the claimant was engaged as an entertainer on the respondent's bus tours, although the last shift he completed seems to have been around 28th January 2024.
4. Early conciliation started on 14<sup>th</sup> February 2024 and ended on 22<sup>nd</sup> March 2024. The claim form was presented to the Tribunal on 22<sup>nd</sup> March 2024.
5. In a letter dated 28th May 2024, Employment Judge Fredericks-Bowyer directed that the claim be listed for a public preliminary hearing to determine the claimant's employment status.
6. The preliminary hearing took place on 12th November 2024, at the end of which the Tribunal orally announced its decision. The Tribunal determined that, at the relevant time, the claimant was not an employee and/or worker of the respondent as defined by section 83(2) of the Equality Act 2010. Accordingly, the Tribunal dismissed the substantive claim because it did not have jurisdiction to determine it.

7. By an e-mail sent to the Tribunal on 13<sup>th</sup> November 2024 the claimant requested the written reasons for the Tribunal's judgment. Written reasons dated 13<sup>th</sup> December 2024 were sent to the parties.
8. On 20<sup>th</sup> December 2024, the claimant e-mailed the Tribunal with a request for reconsideration, which was forwarded to EJ Tueje on 23<sup>rd</sup> December 2024.
9. The request for reconsideration is contained in a 36-page document, which was accompanied by the following PDF documents (adopting the claimant's descriptions of the PDF documents):
  - 9.1 PPH Bundle (97 pages);
  - 9.2 Skeleton argument (8 pages); and
  - 9.3 Updated Evidence Bundle (106 pages).

### **APPLICATIONS FOR RECONSIDERATION**

10. By rules 68 and 69 of the Employment Tribunals Rules of Procedure 2024 (being rules 70 and 71 of the Employment Tribunals Rules of Procedure 2013), a Tribunal may reconsider any judgment on the application of a party, where it is necessary in the interests of justice to do so. Under rule 70(2) of the 2024 Rules (or 72(1) of the 2013 Rules), an Employment Judge shall consider any such request, and:

*“... If the judge considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the tribunal must inform the parties of the refusal.”*
11. As regards reconsideration, there is no material change between the Employment Tribunals Rules of Procedure 2013 and 2024.
12. The claimant's request for reconsideration is a comprehensive 36-page document which raises 4 grounds for reconsideration, and makes additional arguments. Therefore, in the interests of proportionality, not each and every individual point raised by the claimant in his document has been addressed below.
13. The grounds for requesting reconsideration are as follows:
  - 13.1 New evidence that could not have been found or allowed in time before and during the hearing is now available;
  - 13.2 A key witness was not present at the hearing (Mr. JP Boraiu);
  - 13.3 The respondent did not follow a court order and attempted to influence the tribunal, which caused bias against me; and

- 13.4 Some of the findings made by EJ Tueje were without any evidence from the respondent and/or did not prove either self-employment or worker status.

### **POINTS RAISED IN ADDITION TO THE ABOVE GROUNDS**

14. To broadly follow the order in which the claimant has set out his request for reconsideration, the Tribunal will begin by dealing with the additional points raised in the request for reconsideration.

### **Interests of Justice**

15. At paragraphs 5 and 6 of the request for reconsideration, the claimant complains that the respondent lied to the Tribunal by alleging the claimant is a vexatious litigant, and that this caused the Tribunal to be prejudiced against him.
16. The phrase “*vexatious litigant*” was not used during the preliminary hearing. When cross-examining the claimant during the hearing, Ms. Ibrahim, counsel for the respondent, referred him to page 19 of his Evidence Bundle, which had messages exchanged between the parties. These included a message from the claimant stating he couldn’t do a shift for the respondent because the stress of a separate claim had made him unwell.
17. In his witness statement, Mr. Sahabi alleges the claimant is a vexatious litigant. However, the Tribunal did not take this into account when reaching its decision because it is irrelevant to the preliminary issue. Nor did the Tribunal attach any weight to the allegation because it was evident the claimant is not on the list of vexatious litigants because he did not require permission to bring his claim. During the preliminary hearing the only reference to him bringing a previous claim was when Ms Ibrahim cross examined him on paragraph 19 of his statement. Therefore, Mr. Sahabi’s allegation played no part in the Tribunal’s decision, and for that reason, it is not referred to at all in its decision.

### **Preliminary Matters**

18. At paragraphs 8 to 16 of the request for reconsideration, the claimant raises the following points under the heading “*Preliminary matters. General Anxiety Disorder – Mental Health Disability*”:
- 18.1 He refers to his disability and the effects this has on his ability to, amongst other things, concentrate, read, absorb, and understand.
- 18.2 Receiving the respondent’s skeleton argument on the day before the preliminary hearing meant he was unable to read and absorb it.
- 18.3 He protests against the respondent being allowed to rely on that skeleton argument.

- 18.4 He says there were three 15 minute breaks and a one-hour lunch break during the hearing, which he says was insufficient time for him to process information.
  - 18.5 It was unreasonable to ask the claimant to read the respondent's skeleton argument during the lunch break.
  - 18.6 He was not able to challenge the contents of the respondent's skeleton argument.
  - 18.7 The skeleton argument contained arguments that were not included in the respondent's witness statement, and so they should not have been allowed to rely on it.
  - 18.8 He says the hearing should have been adjourned, or the respondent should not have been allowed to rely on the arguments contained in its skeleton argument.
19. Each of the above points is addressed at paragraphs 19 to 30 below.

#### The claimant's disability

20. The Tribunal had regard to the claimant's disability, the effects it had on him, enquired what reasonable adjustments would be required, and accommodated those adjustments, including by having periodic breaks during the hearing.

#### Timing of the respondent's skeleton

21. The Tribunal's letter dated 28th May 2024 notifying the parties about the preliminary hearing, did not give any directions for preparation for the preliminary hearing. On 11th September 2024, the claimant e-mailed the Tribunal seeking directions in respect of the parties exchanging witness statements for the preliminary hearing. Consequently, in a letter dated 2nd October 2024, Employment Judge Sudra directed the parties must exchange witness statements by 5th November 2024. The Tribunal did not give any directions for the parties to prepare skeleton arguments, so, it was the parties' choice whether they prepared one. The claimant sent a skeleton argument, it is understood he sent this around 2 weeks before the preliminary hearing. The respondent's skeleton argument was e-mailed on 11th November 2024, the day before the preliminary hearing.
22. Although the parties were not required to prepare a skeleton argument, both did so. But the claimant objected to the timing of the respondent's skeleton argument. When dealing with his objections at the preliminary hearing, the Tribunal explained that a skeleton argument can be of assistance to the opposing party, because it provides advance notice of a party's arguments. The claimant still objected to the skeleton argument being relied on because he said he had not had sufficient time to read and absorb it. Therefore, the Tribunal informed Ms Ibrahim that she was not permitted to rely on the skeleton argument, and any legal arguments were to be oral submissions only.

23. Accordingly, the Tribunal did all that was within its power to address the claimant's inability to read and absorb the respondent's skeleton argument.

#### Unfairness resulting from the respondent relying on its skeleton argument

24. As stated at paragraphs 20 to 21 above, in light of the claimant's objections, the respondent was not allowed to rely on its skeleton argument at the preliminary hearing.

#### Inadequacy of breaks

25. The hearing was listed at 10:00 am, at which time some housekeeping and applications were dealt with (for instance, the issue of the respondent's skeleton argument). The Tribunal then took a break before the preliminary hearing began at approximately 11:20 am. In addition to that early break, there were, as the claimant states, three 15-minute breaks plus the lunch hour-long break. This meant the Tribunal took a break approximately every hour. That was not a reasonable adjustment that the claimant requested; the Tribunal took the initiative to have periodic breaks as a reasonable adjustment in light of the claimant's disability. When the Tribunal explained in the morning its intention to do so, the claimant did not raise any concerns that the breaks would be insufficient.

#### Requesting the claimant read the respondent's skeleton during the lunch break

26. The Tribunal did not require or request the claimant to read the respondent's skeleton argument during the lunch break. The Tribunal adjourned for lunch after hearing evidence and informed the parties that it would hear closing oral submissions after lunch. The Tribunal mentioned to the claimant that the respondent was likely to make submissions based on the points raised in its skeleton argument, so he may wish to consider it during the lunch break. That was expressly stated to be entirely voluntary. It was therefore for him to decide whether he wanted to do so.

#### The claimant was unable to challenge the respondent's skeleton argument

27. Because the respondent was not allowed to rely on its skeleton argument, the claimant did not need to challenge the contents of the respondent's skeleton argument.

#### The skeleton contained arguments not in the respondent's witness statement

28. It is customary for a skeleton argument to contain legal arguments/submissions, whereas a witness statement provides a party's factual account. This means that typically the contents of each are not identical. But in any event, and as stated, the respondent was not allowed to rely on its skeleton argument.

#### Failing to adjourn and/or not prohibiting the respondent from relying on the arguments in its skeleton argument

29. The claimant did not request an adjournment.

30. It would have been unjust to prevent the respondent from making closing oral submissions. When dealing with the claimant's objections to the respondent's skeleton argument at the start of the preliminary hearing, the Tribunal explained to the claimant that the skeleton argument was likely to contain the points that the respondent would be raising in oral closing submissions. Despite that explanation, the claimant raised no objection to the respondent making oral submissions reflecting the contents of its skeleton argument. No objection was made when the Tribunal informed Ms. Ibrahim she would be allowed to make oral submissions only, nor was any objection made during the hearing when Ms. Ibrahim made her oral submissions.
31. It was also clear to the claimant that the respondent would be making legal arguments because the respondent had provided a bundle of authorities. When the Tribunal informed the parties the respondent was not allowed to rely on its skeleton argument, Ms Ibrahim sought clarification that she could nonetheless rely on the bundle of authorities when making closing submissions. The Tribunal confirmed that she could because the claimant's objections were in respect of the skeleton argument only. It was therefore clear that the Tribunal would be hearing legal arguments, and the claimant did not object to the respondent making oral submissions, nor did he ask for an adjournment.

### **The Judgment**

32. At paragraphs 23 to 42 of the request for reconsideration, the claimant raises points under the heading "*The Judgment*." Most of these points relate to matters dealt with at paragraphs 64 to 76 of the written reasons, but which the claimant disputes. Accordingly, it's not appropriate to grant a request for reconsideration based on matters that have already been considered and determined.
33. Nonetheless, some points raised by the claimant are considered below, although reference should also be made to paragraph 12 above dealing with proportionality.
34. Firstly, at paragraph 27 of the request for reconsideration, the claimant writes: "... I felt that EJ Tueje was biased against me, through no fault of my own..."
35. The claimant does not provide any reasons at paragraph 27 of the request for reconsideration as to why EJ Tueje was said to be biased against him, nor does he state in what way the alleged bias was displayed. This makes it difficult to address this point except in general terms.
36. If the alleged bias is said to be because Mr. Sahabi's witness statement claimed the claimant is a vexatious litigant, that is dealt with at paragraphs 15 to 17 above.
37. EJ Tueje was not biased, and there was no bias in the way the proceedings were conducted, nor in respect of the decision reached, which was based on the evidence and the arguments before the Tribunal as set out in the Tribunal's written reasons.

38. Also at paragraph 28 of the request for reconsideration, the claimant contends that he should have been given 7 days to challenge the points raised by Ms Ibrahim because she relied on arguments in her skeleton argument, which was filed late. As stated, there was no direction for the parties to provide skeleton arguments, so the respondent's skeleton argument was not filed after a time for doing so had expired. In any event, Ms Ibrahim was not allowed to rely on her skeleton argument. The claimant did not request an adjournment in order to have time to consider the respondent's closing submissions. Furthermore, the preliminary hearing was the opportunity for the parties to argue their case, including dealing with the other side's case.
39. At paragraph 34 of the request for reconsideration, the claimant deals with the arguments he made after the Tribunal announced the judgment. The claimant asked whether he could raise points, the Tribunal allowed him to do so, and the Tribunal did not limit the number of points he made. After he made those points, the Tribunal addressed them.
40. As to the point the claimant raises at paragraph 35 of the request for reconsideration, the claimant asserts he was only allowed to swap shifts with entertainers engaged by the respondent. That point goes to only part of the Tribunal's reasons. Paragraph 66 of the Tribunal's determination states that even if the power of substitution was limited to a WhatsApp group containing only those who were engaged by the respondent as entertainers, having regard to the decision in *Ready Mixed Concrete (South East) Limited v Minister of Pensions [1968] 2 QB 497*, that does not undermine the conclusion that the claimant was self-employed.
41. Paragraphs 36 to 38 of the request for reconsideration raise arguments that were not made at the preliminary hearing, so it is therefore not appropriate to deal with those arguments as part of the claimant's request for reconsideration.
42. Paragraphs 36 to 38 of the request for reconsideration also seek to rely on new evidence; the new evidence the claimant would like to rely on is addressed at paragraphs 50 to 52, and 58 to 78 below.

#### **Other noteworthy matters**

43. As a broad response to paragraphs 43 to 45 of the request for reconsideration, the claimant is seeking to re-argues points previously raised, argues new points, and relies on evidence not provided to the Tribunal for the preliminary hearing. The Tribunal reached its decision based on the arguments made and the written and oral evidence provided at the preliminary hearing. Its decision on the evidence and arguments, and the reasons for its decision are at paragraphs 64 to 74 of the Tribunal's determination.
44. To the extent that the claimant seeks to rely on new evidence, the new evidence is addressed at paragraphs 49 to 51, and 59 to 78 below.
45. At paragraph 44(vi) of the request for reconsideration, the claimant queries the source or basis of the Tribunal's finding at paragraph 71 of the written reasons which reads as follows:

*“When he was later added to the respondent’s WhatsApp group on 21st November 2023 he said (see paragraph 36 above): “At this point, I considered myself an employee who had to manage my own taxes.”*

46. The source is a paragraph 8 of the claimant’s witness statement dated 3rd November 2024 which reads:

*“On 21st November 2023, Mr. J.P. Boriau added me to an app called When I Work. It is an app that employers use to organize work schedules for their employees. At this point, I considered myself an employee who had to manage my own taxes.”*

47. The Tribunal accepts it misread paragraph 8 of the claimant’s witness statement. The claimant’s statement does not refer to the claimant being added to the respondent’s WhatsApp group, but instead refers to the him being added to the respondent’s “When I Work” portal.
48. Accordingly, the Tribunal will issue a corrected version of the judgment with written reasons. The Tribunal does not consider this error is sufficient to meet the sift threshold at rule 70(2) for the reasons given at paragraph 109.1 and 109.2 below.

### **THE REQUEST FOR RECONSIDERATION**

49. Paragraph 47 onwards in the request for reconsideration deals with the claimant’s grounds for requesting a reconsideration.

### **Summary Response to the Grounds for Reconsideration**

50. Ground for reconsideration: New evidence that could not have been found or allowed in time before and during the hearing is now available.
51. Response: It is improbable that the new evidence the claimant wishes to rely on to support his contention that entertainers were penalised if they missed a shift would have had an important influence on the outcome on the case. That is because there were other reasons why the Tribunal concluded he was not a worker. In particular, that the flexibility he was afforded to swap shifts was inconsistent with him being a worker.
52. The claimant also argues the reason he did not adduce the new evidence at the preliminary hearing to show he did not have an unfettered right of substitution, was because he was unaware the respondent would argue the claimant had an unfettered right of substitution. The Tribunal notes that amongst the authorities relied on by the claimant in his skeleton argument is *Uber BV v Aslam [2021]*. The three-fold test set out in that case is cited by the claimant in his skeleton argument, and the test includes whether an individual must “*do the work or perform the services personally*”. In other words, whether or not the individual has a right of substitution. Therefore, the claimant’s case was that he was required to perform the work personally, so he should have provided any relevant supporting evidence he wished to rely on at the preliminary hearing. It is not appropriate for him to now rely on evidence to



support arguments that were part of his case. To allow the claimant to rely on this evidence is contrary to the finality of the Tribunal's judgments, and finality is an important aspect of the interests of justice. Furthermore, the new evidence the claimant seeks to rely on would not have had an important influence on the case, as it does not support his contention that he was prohibited from swapping shifts with individuals outside the company.

53. Ground for reconsideration: A key witness was not present at the hearing (Mr. JP Boraiu).
54. Response: It was for the respondent to decide on which witnesses to call, if any. In the event, it decided to call Mr. Sahabi, its Operations Manager. Mr. Sahabi had prepared a witness statement in accordance with Employment Judge Sudra's directions, the claimant had sufficient time to consider it, and an opportunity to cross-examine Mr. Sahabi. It is therefore not necessary in the interests of justice to reconsider the judgment based on this ground.
55. Ground for reconsideration: The respondent did not follow a court order and attempted to influence the tribunal, which caused bias against me.
56. Response: The Tribunal's response is at paragraphs 79 to 81 below. For the reasons stated at paragraphs 79 to 81, the Tribunal considers there is insufficient merit in this ground to meet the sift threshold.
57. Ground for reconsideration: Some of the findings made by EJ Tueje were without any evidence from the respondent and/or did not prove either self-employment or worker status.
58. Response: By this ground, the claimant seeks to challenge the Tribunal's findings. The arguments supporting this ground are a combination of re-arguing points previously considered by the Tribunal, relying on evidence that was available at the time of the preliminary hearing, or raising points that could have been raised at the preliminary hearing but were not. To reconsider the judgment on the basis of points already considered, or points not previously raised is contrary to the finality of the Tribunal's judgments, and is therefore also contrary to the interests of justice.

**New evidence that could not have been found or allowed in time before and during the hearing is now available.**

59. This ground is dealt with at paragraphs 47 to 67 of the request for reconsideration.

**Legal Principles**

60. *Ladd v Marshall [1954] 1 WLR 1489* sets out the principles that apply where a party wishes to adduce new evidence. Those principles apply in the Employment Tribunal, as confirmed in cases such as *Ministry of Justice v Burton [2016] ICR 1128*, and *Outasight VB Ltd v Brown [2015] ICR D11*.
61. The principles established by *Ladd v Marshall* are as follows (see page 1491):

*“To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”*

62. It is evident that Denning LJ held that all three conditions must be fulfilled.

#### The claimant’s reasons for relying on new evidence

63. At paragraphs 52 and 53 of the request for reconsideration, the claimant states the reason he did not adduce at the preliminary hearing the new evidence that he now seeks to rely on, was because the preliminary hearing dealt with matters that were not raised in Mr. Sahabi’s witness statement. In particular, at paragraph 52 he specifies the following 3 points that were not addressed in Mr. Sahabi’s witness statement:

63.1 Whether there was a penalty for missing a shift.

63.2 Whether the claimant had a right to arrange a substitute for his shifts with someone outside the company.

63.3 Whether he could get someone outside the WhatsApp group to cover his shifts.

64. These points are addressed below.

65. As to paragraph 63.1 above, whether there were penalties for missing a shift, is dealt with at paragraph 40 of the written reasons. The Tribunal records the parties agreed that the respondent imposed no real sanctions when entertainers swapped or missed a shift. The claimant now states the respondent misled the Tribunal by claiming penalties were not imposed. He also says that his Updated Evidence Bundle shows penalties were imposed. It is not appropriate to reconsider the judgment based on new evidence relied on to address a point previously agreed between the parties, which the claimant now disputes. See also paragraphs 50 and 51 above.

66. Turning to paragraphs 63.2 and 63.3 above. According to paragraph 13 of the request for reconsideration, the respondent sent his skeleton argument to the respondent on around 3rd November 2024. In the claimant’s skeleton argument, amongst other cases, he relied on *Uber BV v Aslam [2021]*, and cited the three-fold criteria for fulfilling the definition of a limb (b) worker. Therefore, the claimant was aware of the relevance of substitution.

67. As indicated by paragraph 69 of the written reasons, the WhatsApp group consisted of individuals who carried out the entertainer’s role on the respondent’s bus tours. Therefore, no one in the group was “*outside the company.*” The claimant also makes this point at paragraph 79(i) of the request for reconsideration. It means that the points referred to at paragraphs 63.2 and

63.3 above are the same point. Namely, if substitutes were, as the claimant maintains, limited to members of the WhatsApp group, and members of the WhatsApp group consisted only of those carrying out the entertainer's role, these individuals are one and the same.

68. As a more general response about the respondent's legal submissions regarding matters that are not in Mr. Sahabi's witness statement. It is primarily a legal question as to whether an individual is or is not a worker, although it will be necessary to apply the facts of the case to assess whether the legal test has been met. Mr. Sahabi's witness statement was evidence of fact; his witness statement did not include submissions on the law. However, as stated at paragraph 38 of the written reasons, at paragraphs 17 to 17.25 of Mr. Sahabi's witness statement, he set out various instances when the claimant either missed or swapped a shift. Mr. Sahabi's evidence regarding the claimant swapping shifts is relevant to whether the arrangement between the claimant and respondent met the legal test set out in *Uber BV v Aslam [2021]*.
69. The issue of substitution is dealt with at paragraphs 65 to 67 of the written reasons. In particular, at paragraph 66 of the written reasons, the Tribunal found the claimant was not prohibited from swapping his shifts with someone from outside the company. However, in the alternative, the Tribunal considered if there was such a prohibition, that did not undermine its finding that the claimant was self-employed. This addresses the claimant's point at paragraph 54 of the request for reconsideration.
70. At paragraph 55 of the request for reconsideration, the claimant states that Ms. Ibrahim did not put to him in cross-examination that he had an unfettered right of substitution. Ms. Ibrahim's cross-examination of the claimant on this point is dealt with at paragraph 38 of the written reasons, which records her putting the respondent's factual case to him about the degree of freedom he had to swap shifts. In any event, the Tribunal did not make a finding that the claimant had an unfettered right of substitution. The Tribunal found the degree of flexibility the claimant had to swap his shifts was more consistent with him being self-employed.
71. As to paragraph 56 of the request for reconsideration, after Ms. Ibrahim's closing submissions, the claimant was offered an opportunity to make further submissions by way of a reply. The respondent was not prevented from making legal submissions, but the Tribunal did remind him that he was not permitted to give evidence, and the Tribunal stopped when he sought to introduce evidence during his reply.
72. As to paragraph 57 of the request for reconsideration, the Tribunal did not invite or receive any further evidence after judgment was announced. Instead, the Tribunal checked with both parties whether there was anything further the Tribunal should deal with, or that they wished to ask; no limit was placed on how many matters they could raise. The claimant took this opportunity to reiterate two points: firstly, that he was only allowed to swap shifts with those in the WhatsApp group, and wanted to adduce new evidence to support that point. The Tribunal explained it would not be appropriate to introduce new evidence after the judgment had been announced. Secondly, the claimant reiterated that

the fact that he was asking the respondent for a contract was evidence that he did not have one.

73. At paragraphs 58 and 59 of the request for reconsideration, the claimant states that the Tribunal did not allow him to adduce further evidence, and the reason he did not have all the new evidence at the preliminary hearing was because of his mental health disability. The Tribunal accommodated the reasonable adjustment the claimant requested at the start of the hearing, namely, that he be given time to absorb and understand information. Furthermore, of the Tribunal's own volition, there were periodic breaks during the hearing as an additional reasonable adjustment. Therefore, the claimant's disability was taken into account by the Tribunal, although he was not allowed to introduce new evidence after the Tribunal announced its judgment.
74. As stated at paragraph 52 above, the claimant knew the issue of substitution was relevant.
75. While the Tribunal is mindful of making reasonable adjustments, in all the circumstances, introducing new evidence after its decision has been announced, in the Tribunal's judgment, goes beyond a reasonable adjustment. It would be disproportionate having regard to the interests of justice, the procedure rules, the need to have finality on proceedings, costs, and the use of the Tribunal's resources.
76. Paragraphs 63 to 67 of the request for reconsideration reiterate the points previously made and addressed above, for instance:
- 76.1 The claimant disputes he had an unfettered right to arrange a substitution, which is dealt with at paragraphs 51, 69, 82 and 83 herein.
- 76.2 That entertainers were reprimanded for missing shifts, which is dealt with at paragraphs 50 and 64 above.
77. At paragraphs 65(v) to 67 of the request for reconsideration, the claimant raises points to support an argument that the respondent gave him a zero-hours contract.
78. However, the claimant's evidence at the preliminary hearing shows he was seeking a zero-hours contract. This is referred to at paragraphs 26 to 28 and 42 of the written reasons. The Tribunal's findings on this point are that it was common ground between the parties that the claimant did not have a zero-hours contract, and the written reasons note that as recently as 1st February 2024, he was still seeking a zero-hours contract. However, at paragraphs 65(v) to 67 of the request for reconsideration, and relying on new documentary evidence that was not before the Tribunal, the claimant argues that the respondent had given him a zero-hours contract. It is not appropriate for this matter to be dealt with as part of a reconsideration. That is because, firstly, the criteria for relying on new evidence, as set out in *Ladd v Marshall*, have not been met. Secondly, the new evidence is being used to argue a position that is contrary to the claimant's position at the preliminary hearing. It would be contrary to the interests of justice to reconsider the preliminary issue on the

basis of the claimant's current position, which is different from that adopted at the preliminary hearing.

**The respondent did not follow a court order and attempted to influence the tribunal, which caused bias against me.**

79. At paragraphs 68 to 70 of the request for reconsideration, the claimant deals with EJ Fredericks-Bowyer's direction regarding the preliminary hearing as set out in the letter to the parties dated 28th May 2024. In particular, the claimant argues at paragraphs 69 to 70 that the respondent did not follow that order. The claimant does not expressly state in what respects the respondent did not follow the order, so it is difficult to address that point.
80. The claimant also reiterates (at paragraph 69 of the request for reconsideration) that the respondent claimed he was a vexatious litigant. This point has been dealt with at paragraphs 14 to 16 above.
81. At paragraph 72 of the request for reconsideration, the claimant states the Tribunal asked whether there was anything he wished to add. That is not correct: the Tribunal asked whether there was anything further it should deal with or whether either party had any questions in respect of the judgment. The Tribunal did not invite the parties to add anything, as all evidence and arguments had been heard, and judgment had already been given. The claimant used this as an opportunity to state points he disagreed with in the reasons. In particular, the claimant sought to support his position with evidence that had not been considered at the preliminary hearing. While willing to listen to his points of disagreement, the Tribunal made clear it would not receive new evidence. The Tribunal did not limit the claimant to only raising 2 points; the only limitation was on him introducing new evidence.

**A key witness was not present at the hearing (Mr. JP Boraiu)**

82. The claimant objects to Mr. Sahabi giving evidence on behalf of the respondent instead of Mr. Boraiu. This is dealt with at paragraph 52 above.

**Some of the findings made by EJ Tueje were without any evidence from the respondent and/or did not prove either self-employment or worker status.**

83. Above paragraph 78 of the request for reconsideration is the title "*Reasons The Tribunal determined that I had an unfettered right to Substitute/ that I was self-employed.*" The Tribunal did not make a determination that the claimant had an unfettered right of substitution (see paragraphs 70 above).
84. At paragraph 78(i) of the request for reconsideration, the claimant states he is unsure on what basis the Tribunal determined he had an unfettered right of substitution. As stated, the Tribunal did not make that determination.
85. At paragraph 78(ii) of the request for reconsideration, the claimant refers to the Tribunal's findings of fact that sometimes he sought to swap shifts without giving any reason. Those aspects of the respondent's written evidence that were put to the claimant in cross-examination, they are dealt with at paragraph 38 of the

written reasons, and some examples of the occasions he sought to swap are at paragraphs 39.1 to 39.6 of the written reasons, which include occasions when no reason is stated for seeking a swap (see paragraphs 39.2 to 39.5 of the written reasons).

86. The claimant's point raised at paragraph 78(iii) of the request for reconsideration is dealt with at paragraph 69 above.
87. The point raised by the claimant at paragraph 79(i) of the request for reconsideration is addressed at paragraph 54 of the written reasons, which sets out the Tribunal's findings and its reason for making that finding.
88. The point raised by the claimant at paragraph 79(ii) of the request for reconsideration has been dealt with at paragraph 70 above.
89. The point raised by the claimant at paragraph 79(iii) of the request for reconsideration expresses his disagreement with the written reasons, but on its own, disagreeing with the Tribunal's decision is insufficient to warrant reconsideration.
90. Paragraph 80(i) of the request for reconsideration relates to a point the claimant put to Mr. Sahabi during cross-examination (see paragraph 41 of the written reasons). The claimant put to Mr. Sahabi that Mr. Boraiu was an employee and not self-employed, and yet Mr. Boraiu had also sought to swap a shift. The claimant's position being that similarly, him seeking to swap shifts did not mean he was self-employed. The Tribunal's conclusion on this point is at paragraph 67 of the written reasons, as quoted in the request for reconsideration. The Tribunal concluded that Mr. Boraiu, as an employee, trying to swap one shift because he was unwell, was different from the claimant seeking to swap shifts for various reasons, and sometimes providing no reason at all.
91. Paragraph 80(ii) of the request for reconsideration is dealt with at paragraph 85 above.
92. As to paragraph 80(iii) of the request for reconsideration, the Tribunal did not prevent the claimant from cross-examining Mr. Sahabi about any issues of fact, including those arising from paragraphs 17 to 17.25 of his witness statement. However, the Tribunal explained that it was not appropriate to ask Mr. Sahabi during cross-examination to address legal points. The Tribunal also explained the claimant could deal with legal points during his closing submissions.
93. Furthermore, the point the claimant makes at paragraph 80(iii) is dealt with at paragraph 68 above.
94. At paragraph 81(i) of the request for reconsideration, the claimant challenges the relevance of the contents of his profile. The relevance of this is explained at paragraphs 68 and 69 of the written reasons.
95. At paragraph 81(ii) of the request for reconsideration, the claimant disputes that other jobs he has done are relevant to his employment status with the

respondent. The relevance of this is explained at paragraph 69 of the written reasons.

96. As to paragraph 81(iii) of the request for reconsideration, the Tribunal reminded itself at paragraph 61 of the written reasons that it was the actual arrangement between the parties that was relevant. That approach is consistent with authorities such as *Uber BV v Aslam*. And at paragraphs 68 and 69 of the written reasons, the Tribunal explains how the claimant's other work was relevant to what arrangement he had with the respondent. Therefore, by doing so, the Tribunal did not misdirect itself.
97. At paragraph 81(iv) of the request for reconsideration, the claimant disputes that the jobs that an actor does in-between roles, or as side work, prevent that person from having worker status. However, as stated at paragraphs 68 and 69 of the written reasons, the Tribunal explains the relevance of the claimant's other work and/or side work.
98. It's unclear whether the claimant is stating at paragraph 81(v) of the request for reconsideration that the Tribunal has asserted that all acting jobs are on a self-employed basis: the Tribunal has not made that assertion. Paragraph 68 of the written reasons simply records the claimant's oral evidence describing side work as jobs an actor might undertake between short-term acting roles.
99. Paragraphs 82 to 82(vi) of the request for reconsideration deal with paragraph 69 of the written reasons, which deals with integration into the workplace.
100. *Sejpal v. Rodericks Dental Ltd [2022] EAT 91* is a case both parties relied on: the claimant cites it at paragraph 16 of his skeleton argument, and the Tribunal referred to it in its written reasons. *Sejpal* sets out various tools that can assist in determining whether an individual is a worker. Whether an individual is integrated within a company is one of the tools referred to. And at paragraph 69 of the written reasons, the Tribunal explains why the claimant working for BreakAway is relevant to integration.
101. As to paragraph 82(i) of the request for reconsideration, the relevance of the claimant's other jobs is dealt with at paragraph 69 of the written reasons. The relevance is that it is one of a number of factors that relate to integration: on its own it is not determinative, but along with other factors, it's relevant.
102. At paragraph 82(ii) of the request for reconsideration, the claimant disputes Mr. Sahabi's evidence (that all those engaged as entertainers only were self-employed) was unchallenged. The claimant says he dealt with this point in his witness statement where he stated he was a limb (b) worker. However, the Tribunal found Mr. Sahabi's evidence was unchallenged for the following reasons:

102.1 By dealing with this matter in his witness statement, the claimant is not challenging Mr. Sahabi; in particular, he does not give Mr. Sahabi an opportunity to respond.

- 102.2 The claimant's witness statement is dated 3rd November 2024, and so pre-dates Mr. Sahabi's statement dated 5th November 2024. Therefore, the claimant cannot challenge Mr. Sahabi about a witness statement that the latter has not yet made.
- 102.3 In any event, the claimant's assertion in his witness statement that he was a limb (b) worker is not factual evidence; it is an argument or submission. Furthermore, stating that he is a limb (b) worker does not directly address Mr. Sahabi's statement that all those engaged as entertainers only were self-employed.
103. At paragraph 82(iii) of the request for reconsideration, the claimant states he does not recall giving oral evidence that the WhatsApp group was proof of integration. Here, the claimant is referring to the Tribunal's comment at paragraph 71 of the written reasons. The Tribunal accepts its comment was based on a mis-reading of the claimant's witness statement, and will issue a corrected judgment with reasons. However, for the reason stated at paragraphs 110.1 and 110.2 below, that error does not justify progressing the request for reconsideration beyond the sift stage.
104. Regarding paragraph 82(iv) of the request for reconsideration, the Tribunal is entitled to prefer one witness's evidence over another's, particularly where, as the Tribunal found here, that evidence was not challenged or tested in cross-examination.
105. Regarding paragraph 82(v) of the request for reconsideration, the Tribunal considered the actual arrangement, or the "*reality of the relationship*" between the claimant and the respondent, as stated at paragraph 93 above.
106. At paragraph 82(vi) of the request for reconsideration, the claimant makes a factual assertion regarding a matter which the Tribunal has already dealt with in its written reasons. It is therefore not appropriate for the Tribunal to deal with the claimant's factual assertion as part of this reconsideration.
107. Paragraphs 83 to 83(iii) of the request for reconsideration deal with paragraph 70 of the written reasons, which addresses substitution. In paragraphs 83(i) to 83(iii) in particular, the claimant makes various factual assertions regarding substitution. The Tribunal has already dealt with the matters the claimant refers to; those matters are dealt with at paragraph 70 of its written reasons. It would therefore not be appropriate to deal with them as part of the request for reconsideration.
108. Paragraphs 84 to 84(vi) of the request for reconsideration deal with paragraph 71 of the written reasons, which addresses the claimant providing different dates for when he says he became a worker.
109. Paragraph 84(i) of the request for reconsideration states that the Tribunal misread the claimant's witness statement. The Tribunal has reviewed the claimant's witness statement, and accepts that it misread the paragraph referred to. The Tribunal originally understood the claimant's witness statement to be referring to him joining the respondent's WhatsApp group. However, the



Tribunal now understands that the witness statement refers to the claimant being added to the respondent's "When I Work" portal. The Tribunal has corrected the written reasons to address this error, and the corrected version will be sent to the parties in due course.

110. Notwithstanding this correction, the Tribunal considers the threshold at rule 70(2) has not been met for the following reasons:

110.1 The Tribunal referred to the date the claimant was added to the WhatsApp group in connection with its finding that the claimant had given different dates for when he said he became a worker. Correcting the reference to the "WhatsApp group" by replacing it with the respondent's "portal" does not affect the Tribunal's reasoning. The Tribunal's reasoning was that the claimant had given different dates for when he said he was a worker. That irrespective of whether one of the dates he gave was the date he was added to a portal, instead of a WhatsApp group, does not alter the position that he gave different dates for when he says he became a worker.

110.2 Secondly, paragraph 71 of the written reasons provides one reason why the Tribunal concluded the claimant was not a worker. The Tribunal expressly stated that the matters dealt with at paragraph 71 were "*not the most significant factor.*" Therefore, as the correction does not alter the reasoning underpinning a factor that was not central to the Tribunal's conclusion, the appropriate and proportionate course is to correct the written reasons. It would be disproportionate to proceed with a reconsideration due to that error.

111. At paragraph 84(ii) of the request for reconsideration, the claimant is rearguing his case. Requesting a reconsideration is not intended to be an opportunity to re-argue matters that the Tribunal has already considered.

112. At paragraph 84(iii) of the request for reconsideration, the claimant argues he was integrated within the respondent's workplace. However, the Tribunal has already considered the evidence and arguments in respect of integration, which is dealt with at paragraphs 68 and 69 of the written reasons.

113. At paragraph 84(iv) of the request for reconsideration, the claimant deals with reasons why the Tribunal should have rejected the evidence and/or arguments put forward by the respondent. However, this is seeking to argue matters which the Tribunal has already considered.

## **CONCLUSION**

114. The claimant's reasons for requesting a reconsideration do not disclose any arguments that have a reasonable prospect of successfully establishing that it is necessary and in the interests of justice to reconsider the decision.

115. Accordingly, these points fail to pass the sift stage at rule 70(2).

Case number:  
2303023/2024

Employment Judge Tueje  
19 February 2025