EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000241/2024

Held in Glasgow via Cloud Video Platform (CVP) on 5 February 2025 [Reconsideration Hearing held in Chambers on the written application of the respondent]

Employment Judge B Beyzade

Mr M Dalziel	**Claimant**
MCP Scotland Ltd	**Respondent [Per written application]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The judgment of the Tribunal is that:

1.1 Having considered the respondent's application for reconsideration of the Tribunal's Judgment dated 03 December 2024, and sent to parties on 04 December 2024, that "1.1 the complaint of unauthorised deductions from wages in respect of arrears of pay between 08 January 2024 and 22 January 2024 is well founded and the respondent is ordered to pay the claimant the sum of £1587.00 (gross) from which tax and national insurance requires to be deducted, provided that the respondent intimates any such deductions in writing to the claimant and remits the sum deducted to His Majesty's Revenue and Customs. 1.2 The claimant's complaint of breach of contract (expenses) is well-founded and the claimant is awarded the amount of £20.70 in respect thereof." ("the Original Judgment") the Tribunal, after private deliberation, at the Reconsideration Hearing held in chambers on 05 February 2025, decided that the respondent's application dated

18 December 2024 for reconsideration of the Judgment sent to the parties on 04 December 2024 is refused. There is no reasonable prospect of the Original Judgment being varied or revoked.

1.2 The Tribunal, on reconsideration, has confirmed the Original Judgment sent to the parties on 04 December 2024, without variation, and amplified its reasons, as set forth in the following Reasons for this Reconsideration Judgment, to address the points arising from the respondent's application.

REASONS

Introduction

1. This case called before the Tribunal on 05 February 2025, for an in chambers Reconsideration Hearing, with the Employment Judge sitting alone in chambers (in private). This was appropriate having taken account of the matters contained in the Senior President's Practice Direction on Panel Composition ("the Practice Direction") along with the Presidential Guidance on Panel Composition which came into effect on 29 October 2024. It is noted in this regard that the Practice Direction provides, "6. In respect of any other matter an Employment Tribunal is to consist of a judge. This includes consideration of whether a party's application for reconsideration discloses a reasonable prospect of a judgment being varied or revoked." The Presidential Guidance indicates at paragraph 16 that post-hearing matters in respect of a reconsideration application (including when deciding whether or not such an application discloses a reasonable prospect of a judgment being varied or revoked under Rule 72 of the ET Rules 2013) will always be decided by an Employment Judge sitting alone. In addition, I am satisfied that this decision in respect of panel composition furthers the interests of justice and accords with the Tribunal's overriding objective, taking account that the Original Judgment was promulgated following a hearing before an Employment Judge sitting alone.

2. The respondent made an application dated 18 December 2024 for reconsideration. At the date the application was made, the rules for

reconsideration were set out at Rules 70 and 71 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules 2013") [the Rules relating to reconsideration of Judgments are, as at today's date, contained in Rules 68 to 70 of the Employment Tribunal Procedure Rules 2024 ("the ET Rules 2024")].

3. The Employment Judge considered the respondent's application under Rule 70 of the ET Rules 2024 (the legal test under Rule 70(2) of the ET Rules 2024 is in the same terms as Rule 72(1) of the ET Rules 2013). The Employment Judge decided that there is no reasonable prospect of the Original Judgment being varied or revoked because of the reasons set forth below.

4. The reconsideration application arose out of the Tribunal's Judgment on 03 December 2024 (issued to parties on 04 December 2024) ["the Original Judgment"] that:

"1.1 the complaint of unauthorised deductions from wages in respect of arrears of pay between 08 January 2024 and 22 January 2024 is well founded and the respondent is ordered to pay the claimant the sum of £1587.00 (gross) from which tax and national insurance requires to be deducted, provided that the respondent intimates any such deductions in writing to the claimant and remits the sum deducted to His Majesty's Revenue and Customs.

1.2 The claimant's complaint of breach of contract (expenses) is well-founded and the claimant is awarded the amount of £20.70 in respect thereof."

5. After receipt of the respondent's reconsideration application which was referred to the Employment Judge, and thereafter, following the Employment Judge's directions, the Clerk to the Tribunal, sent correspondence to the parties dated 20 January 2025 advising that the respondent's application had been referred to the Employment Judge for consideration in accordance with Rules 68-70 of the ET Rules 2024, which will be issued to parties in due course.

6. 05 February 2025 was the earliest convenient date for the Tribunal to consider the respondent's application, on account of other commitments, including annual leave, the date of receipt of the respondent's application, and other judicial commitments.

The Tribunal's Original Judgment

7. By a Reserved Judgment, following a listed Final Hearing in public that took place as CVP a hearing held in Glasgow on 09 September 2024 and having heard and considered evidence and detailed submissions from parties, the Tribunal, determined that the claimant's complaints were well founded and awarded a sum of money in respect of each of the complaints (as detailed below), and it did so for the reasons given at the time in the Tribunal's written Reasons dated 03 December 2024 that were issued to parties dated 04 December 2024.

8. The issues that the Tribunal were required to investigate and determine during the Final Hearing in Public, were set out at paragraph 6 of the Original Judgment.

9. For present purposes, it will suffice to note here the specific terms of the Tribunal's Judgment only, issued in writing on 04 December 2024 ("the Original Judgment"), as follows:

> *"1.1 the complaint of unauthorised deductions from wages in respect of arrears of pay between 08 January 2024 and 22 January 2024 is well founded and the respondent is ordered to pay the claimant the sum of £1587.00 (gross) from which tax and national insurance requires to be deducted, provided that the respondent intimates any such deductions in writing to the claimant and remits the sum deducted to His Majesty's Revenue and Customs.*
>
> *1.2 The claimant's complaint of breach of contract (expenses) is well-founded and the claimant is awarded the amount of £20.70 in respect thereof."*

Respondent's reconsideration application

10. On 18 December 2024, by way of an email sent that day to the Tribunal at 08.00AM, the respondent, applied to the Tribunal, for reconsideration of the Original Judgment that was sent to parties in writing following the Final Hearing on 09 September 2024 (the Judgment was issued to parties in writing on 04 December 2024).

11. The respondent's application did not appear to have been copied to the claimant by way of cc into the said email and there was no confirmation within the email that the claimant had been copied into the email. Therefore, the respondent failed to comply with the requirements of Rules 31 and 90 of the ET Rules 2024. Notwithstanding this, the Tribunal proceeded to consider the application pursuant to Rule 70 of the ET Rules 2024.

12. The respondent's reconsideration application, which was sent to the Tribunal by Mr Jordan Burns McPhail, Company Owner acting on behalf of the respondent (hereinafter referred to as "the respondent") states as follows:

> *"1. A considerable portion of the evidence presented consists of hearsay. The claimant did not provide verifiable proof for several key events; however, the judge relied on this hearsay in reaching the ruling.*
>
> *2. We did not receive a complete bundle of evidence nor were we informed of the specific claims in detail prior to the hearing. For example; We were unaware that the claimant was disputing the damages to the van, which hindered our ability to submit relevant evidence. The claim presented to us pertained exclusively to non-payment of wages. The claimant had been provided with a breakdown of deductions and could have raised any disputes regarding these deductions, thus allowing us to provide further evidence.*
>
> *3. We were not given the opportunity to request the attendance of Mr. Wood, as we were uninformed of the disputed events that led to the claimant's departure.*

4. *We contend that the Employment Judge lacks the requisite technical knowledge and business knowledge to make a ruling on issues related to poor workmanship or the associated costs incurred.*

5. *It is unreasonable for the Tribunal to state that they "did not find that the claimant's standard of work was unsatisfactory." The judge does not possess the technical expertise necessary to render judgments on the quality of work, and surely it is the Tribunal's responsibility to determine whether the deductions were lawful in accordance with the contractual agreements. The Tribunal is not equipped to assess the adequacy of the claimant's work as they are not qualified and competent tradespersons.*

6. *We believe that the Employment Judge did not give sufficient consideration to the Deductions to Pay Agreement and other documents that clearly indicate the claimant's contractual acceptance of these deductions.*

7. *The judge dismissed several of our arguments on the basis of a "lack of evidence," despite the fact that essential evidence had not been able to be submitted prior to the hearing due to our unawareness of the claimant's arguments. In contrast, the claimant's verbal accounts were accepted as credible, while our version of events was rejected, which raises concerns of bias. There was also bias whereby the Judge sided with the Claimant in regards to explanations around works quality, even after in depth explanations from the respondent and images showing clear debris which was agreed by both parties to be there, yet the Judge still favoured the claimant.*

8. *Regarding our claim for poor workmanship, the judge noted that "the respondent did not provide copies of any relevant invoices or receipts relating to expenditure." However, we clarified that, as a company utilizing in-house labor, we would not possess invoices from external parties. This still constitutes a loss of income while our personnel were engaged in that job, thereby resulting in lost revenue. Our explanation*

was thorough, and we find the judge's decision perplexing in light of the information provided.

In conclusion, we assert that had we been furnished with the correct details prior to the hearing, we would have been able to submit sufficient evidence. Additionally, we were unable to request a postponement, as the relevant arguments became clear only during the hearing. We also believe that a substantial amount of evidence was not submitted due to a lack of awareness on our part regarding its necessity, and that the judge appeared to favor the claimant based on hearsay without factual substantiation. This situation presents new evidence, as we are now aware of the claimant's arguments and are prepared to submit the relevant documentation that will support our case."

Issues for determination by this Tribunal

13. The only live issue for determination by the Tribunal at this Reconsideration Hearing was the respondent's application for reconsideration of the Original Judgment dated 03 December 2024 and issued on 04 December 2024, as per the respondent's application of 18 December 2024.

14. Accordingly, the case file was referred to the Employment Judge thereafter for further directions. The Employment Judge was provided with copies of all correspondences received from parties since 09 September 2024 (in addition to correspondences prior to 09 September 2024 which were accessible within the Tribunal file that were before the Tribunal at the Final Hearing and had been forwarded to the Employment Judge thereafter).

15. The Employment Judge also reviewed all correspondences on the Tribunal file between the parties and the Tribunal up to and including today's date, 05 February 2025.

Relevant law: reconsideration

16. The ET Rules 2024 in relation to the reconsideration of judgments are at Rules 68 – 70. Those provisions are as follows:

"Principles

68.—

(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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.

Application for reconsideration

69 -

Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why 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.

Process for reconsideration

70.—

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

(2) If the Tribunal 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.

(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application."

17. I noted that the ET Rules 2013 set out the Rules of Procedure in Schedule 1, and those in relation to the reconsideration of judgments were at Rules 70 – 73.

18. When considering such an issue regard must also be had to the Tribunal's overriding objective in Rule 3 of the ET Rules 2024 (previously Rule 2 under the ET Rules 2013). The Tribunal's "overriding objective" under Rule 3 is to deal with the case fairly and justly. The precise terms of Rule 3 of the ET Rules 2024, are as follows:

"3.—

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal."

19. A reconsideration application requires to be dealt with as per Rules 68 to 70 of the ET Rules 2024. I have set out its full terms above for ease of reference. As this was an application for reconsideration by the respondent, Rule 71, relating to reconsiderations by the Tribunal on its own initiative, does not fall to be considered further. Further, as always, there is the Tribunal's overriding objective, under Rule 3, to deal with the case fairly and justly.

20. The previous Employment Tribunal Rules 2004 provided a number of grounds on which a judgment could be reviewed (now called a reconsideration). The only ground in the ET Rules 2024 is that the judgment can be reconsidered where it is necessary "in the interests of justice" to do so. That means justice to all parties.

21. However, it was confirmed by Her Honour Judge Eady QC (as she then was, now Mrs Justice Eady, the EAT President 01 February 2022 to 01 February

2025) in *Outasight VB Limited v Brown* [2014] UKEAT/0253/14/LA, reported at [2015] ICR D11, that the guidance given by the EAT in respect the previous Rules is still relevant guidance in respect of the ET Rules 2013 (the legal test under Rule 70(2) of the ET Rules 2024 remains unchanged) and, therefore, I have considered the case law arising out of the 2004 Rules.

22. The approach to be taken to applications for reconsideration was also set out more recently in the case of *Liddington v 2Gether NHS Foundation Trust* [2016] UKEAT/0002/16/DA in the judgment of the then Mrs Justice Simler, then President of the EAT, and now Lady Simler in the Supreme Court. The Employment Tribunal is required to:

> *"1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;*
>
> *2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and*
>
> *3. give reasons for concluding that there is nothing in the grounds advanced by the (applicant) that could lead him to vary or revoke his decision."*

23. In paragraph 34 and 35 of the Judgment, the learned former EAT President, the then Mrs Justice Simler (now Lady Simler, a Justice of the Supreme Court), stated as follows:

> *"34. In his Reconsideration Judgment the Judge identified the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage. In this case, the Judge addressed each ground in turn. He considered whether was anything in each of the particular grounds relied on that might lead him*

to vary or revoke his decision. For the reasons he gave, he concluded that there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

35. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly."

24. There is a public policy principle that there must be finality in litigation and reviews or reconsiderations are a limited exception to that principle. In the case of *Stephenson v Golden Wonder Limited* [1977] IRLR 474 it was made clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "second bite of the cherry". Lord Macdonald, the EAT Judge in Scotland, said that the review provisions 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 produced which was available before".

25. The Employment Appeal Tribunal went on to say in the case of *Fforde v Black* EAT68/80 that this ground does not mean *"that in every case where a litigant is unsuccessful is automatically entitled to have the Tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order."*

26. *"In the interests of justice"* means the interests of justice to all parties. The EAT provided further guidance in Reading v EMI Leisure Limited EAT262/81 where it was stated *"when you boil down what it said on [the claimant's] behalf it really comes down to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice", means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation."*

27. I consider that any guidance on the meaning of "the interests of justice" issued under the 2004 Rules (and the earlier Rules) is still relevant to reconsiderations under the ET Rules 2024. I also remind myself that the phrase "in the interests of justice" means the interests of justice to all parties.

28. Further, I have also reminded myself of the guidance to Tribunals in *Newcastle upon Tyne City Council – v- Marsden* [2010] ICR 743 and in particular the words of Mr Justice Underhill when commenting on the introduction of the overriding objective (now found in Rule 3 of the ET Rules 2024) and the necessity to review previous decisions and on the subject of a review*: "But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in Jurkowska v Hlmad Ltd. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic" "… that dealing with cases justly requires*

that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made."

29. Further, I have also considered the further guidance on the ET Rules 2013 from Her Honour Judge Eady QC (as she then was, now Mrs Justice Eady, former EAT President) in her judgment in *Outasight VB Limited –v- Brown* [2014] UKEAT/0253/14. I have considered that guidance and in particular have noted what is said about the grounds for a reconsideration under the ET Rules 2013: *"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3)(d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3)(e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules".*

30. In considering matters in the present case, I also reviewed the EAT judgment in *Wolfe v North Middlesex University Hospital NHS Trust* [2015] ICR 960; [2015] UKEAT/0065/14, and I have noted, from that judgment, at paragraph 75, what the EAT judge, His Honour Judge Serota QC, stated*: "There is now a long line of authority to the effect that where a would be Appellant believes there has been a material omission on the part of an Employment Tribunal to deal with a significant issue or to give adequate reasons in respect of significant findings, the proper course is not to lodge a Notice of Appeal, but*

to go straight back to the Employment Tribunal and ask that the omission be repaired. If reasons are given orally, this should be done as soon as practicable on the completion of delivery of the judgment, and if Written Reasons are later handed down as soon as practicable after the Judgment is received. I would like to make clear that it is the duty of advocates to adopt this course in litigation in the Employment Tribunal."

31. Further, in considering this reconsideration application, I have also taken into account the helpful judicial guidance provided by Her Honour Judge Eady QC, then EAT Judge, and now former EAT President, in her judgment in *Scranage v Rochdale Metropolitan Borough Council* [2018] UKEAT/0032/17, at paragraph 22, when considering the relevant legal principles, where she stated as follows: - *"The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation."*

32. At *Outasight VB Ltd v Brown*, at paragraphs 27 to 38, the learned EAT Judge (now Mrs Justice Eady, former EAT President) reviewed the legal principles. The EAT President, then Mr Justice Langstaff, in *Dundee City Council v Malcolm* [2016] UKEATS/0019-21/15, at paragraph 20, states that the current Rules effected no change of substance to the previous Rules, and that they do not permit a party to have a second bite of the cherry, and the broader interests of justice, in particular an interest in the finality of litigation, remained just as important after the change as it had been before

33. Further, I have also taken into account the Court of Appeal of England and Wales's judgment, in *Ministry of Justice v Burton & Another* [2016] EWCA Civ.714, also reported at [2016] ICR 1128, where Lord Justice Elias (now a retired Lord Justice of Appeal), himself a former EAT President, at paragraph

25, refers, without demur, to the principles *"recently affirmed by HH Judge Eady in the EAT in Outasight VB Ltd v Brown UKEAT/0253/14."*

34. Specifically, at paragraph 21 in Burton, Lord Justice Elias had stated that: *"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on 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…"*

Discussion and decision

35. I have now carefully considered the respondent's written application, and all correspondences up to and including 05 February 2025, including all references to evidence within the respondent's reconsideration application, my own notes of the evidence and submissions made at the Final Hearing (including any documents, oral evidence, submissions and authorities referred to by parties), the Judgment and written reasons issued to parties following that hearing, and also my own obligations under Rule 3 of the ET Rules 2024, being the Tribunal's overriding objective to deal with the case fairly and justly.

36. I consider that the respondent has been given a reasonable opportunity, in advance of this Reconsideration Hearing, to make their application for reconsideration of the Original Judgment and to put forth any grounds in respect thereof.

37. On the test of *"in the interests of justice",* under Rule 68 of the ET Rules 2024, which is what gives this Tribunal jurisdiction in this matter, there is now only one ground for *"reconsideration",* being that reconsideration *"is necessary in the interests of justice."* That phrase is not defined in the ET Rules 2024

(unlike the position upon which a Tribunal could "review" a Judgment under the former 2004 Rules).

38. While there are many similarities between the former 2004 Rules and the ET Rules 2024, there are some differences between the current Rules 68 to 70 of the ET Rules 2024 and the former 2004 Rules 33 to 36. Reconsideration of a Judgment is one of the two possible ways that a party can challenge an Employment Tribunal's Judgment. The other way, of course, is by way of an appeal to the EAT.

39. Rule 68 confers a general power on the Employment Tribunal, and it stands in contrast to the appellate jurisdiction of the EAT. In most cases, a reconsideration will deal with matters more quickly and at less expense than an appeal to the EAT.

40. Here, in the present case, according to the information on the Tribunal file, the respondent has not chosen to pursue both routes. If the respondent decides to appeal to the EAT (if so advised), the EAT will decide on next steps in that appeal after it, and parties, have given consideration to this my Reconsideration Judgment.

Disposal

Grounds of respondent's application – is it necessary in the interests of justice to reconsider the Original Judgment?

41. Having assessed the submissions and representations made by the respondent, I am of the view that this reconsideration application in respect of the grounds of the respondent's application should be refused because it is not necessary in the interests of justice to grant the respondent's application.

42. The Tribunal is of the view that it is not in the interests of justice to allow the respondent's application in respect of any of the grounds set out within the respondent's application, and nor would it be in accordance with the Tribunal's overriding objective to deal with the case fairly and justly to grant the respondent's application on any of the grounds within the respondent's application.

43. In reaching this view, I have again reviewed the documents in the substantial file of papers provided at the Final Hearing (documents referred to by parties in evidence during the Final Hearing, the evidence before the Tribunal and my notes), all relevant correspondences on the Tribunal file, the relevant statutory provisions and case law authorities, the parties' representations made at the hearing, and I have taken account of all of the relevant circumstances in doing so.

44. I do not believe that the Tribunal have made any error of law, as suggested by the respondent, but I do recognise that if an appeal is pursued to the EAT, that matter is ultimately a matter for the EAT to decide upon, and not for this Tribunal.

45. As I see things, in considering the closing arguments of the parties, following the evidence provided to the Tribunal at the Final Hearing, the Tribunal thereafter took all their evidence and submissions into account relating to the grounds within the respondent's application, during their private deliberation in chambers, taking into account all relevant considerations, and the Tribunal did not have regard to anything irrelevant.

46. The Tribunal sought to take into account all of the circumstances of the case, and the correspondences, documents and submissions before the Tribunal. The Tribunal applied the facts to the law, and it reached the conclusions that were reached in the Original Judgment.

47. Now, on reconsideration, the Tribunal do not consider it is necessary in the interests of justice to vary the Original Judgment and allow the respondent's application. Put simply, the respondent's arguments put within the reconsideration application have not established for me that it would be necessary in the interests of justice for the Original Judgment to be varied or revoked on reconsideration.

48. My view remains essentially the same as it was expressed in the Reasons given at the time in the Tribunal's written Judgment and Reasons ruling on 03 December 2024 and sent to parties on 04 December 2024.

49. As the EAT has made clear, in many other instances, when reviewing any Judgment of an Employment Tribunal, parties should know why they have won or lost, but the Tribunal's decision is not required to be an elaborate formalistic product of refined legal draftsmanship – it must give adequate reasons for its decision, and failure to do so can amount to an error of law giving rise to an appeal to the EAT.

50. The Tribunal gave adequate reasons at the time, when the written Judgment and Reasons were delivered but, in light of the respondent's reconsideration application suggesting that incomplete or inadequate reasons have been given for certain matters, I take the opportunity to amplify those earlier reasons here in the Reasons for this Reconsideration Judgment.

51. I am satisfied that the Tribunal did not fail to take into account relevant considerations, and further, that the Tribunal did not have regard to irrelevant considerations.

52. For completeness, I confirm that prior to reaching the Tribunal's conclusion in the Original Judgment the Tribunal reviewed all the documents to which it were referred including but not limited to the matters within the respondent's reconsideration application that were before the Tribunal during the Final Hearing.

53. I have included below brief observations in respect of the grounds within the respondent's reconsideration application:

    53.1. The respondent sets out their position in respect of a number of events relating to the evidence before the Tribunal. By way of example the respondent states in their application that a considerable amount of the evidence was hearsay and the claimant did not provide verifiable proof for several key events. The Tribunal heard evidence from the claimant's and the respondent's witnesses on the relevant matters, and reached their conclusions based on the oral evidence, the documents to which the Tribunal was referred and parties' submissions. The respondent's references to there being a considerable portion of hearsay evidence that formed the basis of the

Original Judgment is not accepted. The claimant gave evidence which was on the whole based on their own experience of the relevant events and by reference to documents (including documents produced by the respondent). The Tribunal refers to their findings of fact and conclusions relating to this matter within the Original Judgment.

53.2. The respondent levels criticism that they did not receive a complete file of evidence nor were they informed of the specific complaints in detail (including that the claimant was disputing damage to the van). The claimant stated in their ET1 Form that they were owed a number of days' wages and the sum of money claimed in respect of expenses. The respondent intimated in their ET3 Form that deductions from the claimant's wages had been made and that those deductions were lawful. The respondent advised at the outset of the hearing that they had failed to send the claimant copies of the respondent's supporting documents (please see paragraph 4 of the Original Judgment). By agreement the Tribunal adjourned the hearing to allow the claimant a period of time (20 minutes) to review the respondent's documents. Although it is not clear what further evidence the respondent wished to present in relation to any alleged damage to the company van, the claimant had only been given an opportunity to review the respondent's supporting documents during the hearing. I accepted in the Original Judgment (paragraph 40) the respondent's evidence to the extent that £85.00 damage had been sustained to the company van. As recorded at paragraph 5 of the Original Judgment, both parties were prepared to continue with the Hearing and neither party applied for a postponement of the hearing. The Tribunal refers to their findings of fact and conclusions relating to this matter within the Original Judgment.

53.3. The respondent refers to not being given the opportunity to call Mr Wood to give evidence. The respondent was at liberty to produce any relevant witness evidence but it elected not to call Mr Wood. The Tribunal set out their observations in respect of Mr Wood not giving

evidence at paragraph 35 of the Original Judgment. Furthermore, the application does not set out what issues Mr Wood would have spoken to had he been called to give evidence.

53.4. It is difficult to decipher the contention that the Employment Judge lacks the technical knowledge and business knowledge to make a ruling on issues related to poor workmanship or the associated costs incurred. The respondent did not raise any such concerns prior to or during the Final Hearing. It was open to the respondent to make an application to call professional evidence on matters requiring opinion evidence (if appropriate). The respondent made no such application and no explanation is proffered in the application in respect thereof. The Tribunal made its decision based on the oral evidence, the documents to which it was referred and parties' submissions.

53.5. The Tribunal considered the terms of the Deductions to Pay Agreement and other documents to which it was referred. The relevant findings relating to the same are set out in the Original Judgment.

53.6. In relation to the respondent's contention that they utilised in house labour, the respondent did not establish relevant matters relating to liability and quantum that they had asserted in respect thereof and I refer to the findings in the Original Judgment.

53.7. In terms of any evidential matters that were referred to within the respondent's oral evidence and any documents referred to therein, the Tribunal took account and considered the same prior to reaching their conclusion. The respondent does not appear to make any proper application to rely upon fresh evidence, I do not accept that any purported fresh evidence could not have been obtained with reasonable diligence by the respondent for use during the Final Hearing (or that the respondent did not have the opportunity to apply for a postponement) and no proper particulars of any proposed fresh evidence have been provided in any event.

53.8. The Tribunal's findings of fact and observations were set out in the Original Judgment. The Tribunal also reached conclusions on each point within the List of Issues thereafter.

53.9. The Tribunal took account of and considered the respondent's evidence, along with the other evidence, and it reached the conclusions on any relevant evidence before the Tribunal in terms of the matters contained in the List of Issues (as set out in the Original Judgment).

54. Moreover, having considered all of the respondent's points made in respect of the reconsideration application, I consider the Final Hearing was conducted both in accordance with Article 6 of the ECHR (right to a fair trial) and the Tribunal's overriding objective set out in Rule 3 of the ET Rules 2024. The List of Issues in this case was clearly set out in the Original Judgment, the Tribunal considered evidence before it from both parties' witnesses, it considered any oral representations from parties, and the Original Judgment was delivered to parties thereafter which disposed of all the matters within the List of Issues. Ultimately, the claimant's claim succeeded following the Final Hearing and the relevant sum of money was awarded in respect of each of the claimant's complaints. The respondent's allegations relating to bias are not well founded.

55. The Original Judgment remains unaltered having taken a step back to consider the respondent's application in light of the full factual matrix, the evidence and the submissions that were before the Tribunal. The Tribunal did not accept the respondent's position that it is in the interests of justice to reconsider the Original Judgment. In my judgment, it would not be appropriate or proportionate to revisit or to reconsider the Original Judgment (or to list a reconsideration hearing in public), in circumstances in which there is no reasonable prospect of the Original Judgment being varied or revoked.

56. On the whole, the respondent's application appears to be a challenge in terms of the oral evidence, documents and submissions taken into account by the Tribunal and the weight afforded to the same which is a matter for the Tribunal, and which was carefully considered prior to reaching the Tribunal's

decision. If the respondent disagrees with the Tribunal's approach in terms of the same, the proper way to challenge this is by way of an appeal (if so advised) and not a reconsideration application.

57. The Tribunal's conclusions were reached after having considered all the evidence and submissions before the Tribunal, including in terms of any witness evidence, documents, the Tribunal's notes of the oral evidence and submissions (and the matters contained within the documents to which the Tribunal were referred).

58. In any event, a perversity appeal, which is essentially a complaint about a Tribunal's conclusions (if so advised) should be pursued at the EAT. In reaching this decision on the respondent's reconsideration application, consideration has been given to the leading case in terms of the threshold for a perversity appeal, *Yeboah v Crofton* [2002] IRLR 634 at paragraph 93, in which Mummery LJ said: *"Such an appeal ought only to succeed where an overwhelming case is made out that the Employment Tribunal reached a decision that no reasonable tribunal, on a proper application of the evidence and the law, would have reached. Even in cases where the appeal tribunal has 'grave doubts' about the decision of the employment tribunal, it must proceed with 'great care,' British Telecommunications PLC v Sheridan [1990] IRLR 27 at para 34."*

59. Having carefully considered the points made by the respondent in this reconsideration application, the Tribunal does not consider that it is necessary in the interests of justice to revoke or vary the Original Judgment in respect of any of the grounds of the respondent's reconsideration application, and the Tribunal adheres to the Original Judgment, for the reasons given then with the Original Judgment, and as now amplified in these Reasons. As such, the Original Judgment stands, and the Tribunal does not set it aside.

Conclusion

60. The respondent's application dated 18 December 2024 for reconsideration of the Judgment and Reason dated on 03 December 2024 (Judgment and written reasons sent to the parties on 04 December 2024) is refused. There

is no reasonable prospect of the Original Judgment being varied or revoked for the reasons set out above.

61. Accordingly, the Tribunal does not vary or revoke the Original Judgment in respect of any of the grounds of the respondent's reconsideration application, as the Tribunal confirms the Original Judgment, that being the appropriate disposal having refused the respondent's reconsideration application.

Further procedure

62. The reconsideration application made by the respondent having been refused, no further consideration shall be given to the same and no further directions shall be issued. As the Original Judgment has not been varied or revoked, the Original Judgment is confirmed. There are no further or other applications that have been made in the Employment Tribunal that remain extant.

B. Beyzade

Employment Judge

05 February 2025

Date of Judgment

Date sent to parties 07 February 2025

I confirm that this is my Reconsideration Judgment and Reasons in the case of 8000241/2024 Mr Mark Dalziel v MCP Scotland Ltd and that I have signed the Reconsideration Judgment and Reasons by electronic signature.