# EMPLOYMENT TRIBUNALS

**Claimant:** Sarah Stroud

**Respondent:** L&M Coventry Limited

**Heard at:** Exeter **On:** 7 March 2024

**Before:** Employment Judge Oldroyd

**Representation**

**For the Claimant:** In person
**For the Respondent:** Peninsular

# RECONSIDERATION JUDGMENT

1. The Respondent's application to amend the Tribunal's Judgment dated 8 December 2023 pursuant to Rule 67 of the Employment Tribunal Rules is dismissed.

2. The Respondent's application for reconsideration of the Tribunal's Judgment dated 8 December 2023 to be made out of time is allowed pursuant to Rule 5 of the Employment Tribunal Rules.

3. The Respondent's application for reconsideration of the Tribunal's Judgment dated 8 December 2023 is dismissed.

# REASONS

## Background

1. By way of ET1 presented on 25 July 2023, the Claimant, who worked in a front of house role at a pub / restaurant claimed that she was summarily dismissed by the Claimant without notice. The Respondent resisted the claim by asserting that the Claimant was not dismissed but instead chose to resign.

2. A hearing took place before me on 8 December 2023. The Claimant succeeded in her claim. Oral reasons were provided. Among other things, the Claimant was awarded £4,950 in respect of her claim for notice pay by way of a Judgment. This award was based on the fact that:

   2.1 The Claimant was entitled to 11 weeks' notice.

   2.2 ET1 revealed the Claimant's weekly gross pay to be £450. This figure was not challenged in ET3 or in oral evidence. No documentary evidence was deployed (such as wage slips or tax documents) to suggest the Claimant's assessment of her earnings was incorrect.

3. On 16 December 2023, the Claimant requested written reasons. Those reasons are dated 11 January 2024 and were circulated to the parties on 22 January 2024.

4. On 18 April 2024, the Respondent, acting for first time with advisers, made an Application for correction of a clerical error to the Judgment or else reconsideration. Essentially, it was argued that the suggestion that the Claimant earned £450 per week was wrong. The Respondent provided wage slips for the period relating to the last 17 weeks of the Claimant's employment that suggested she was earning £308 per weeks based upon an hourly rate of £11 per hour such that her award for notice pay ought to have been £3,388. Other tax documents were provided to.

5. The Respondent acknowledged its Application was made out of time, but sought an extension of time retrospectively on the basis that the Respondent, as a litigant in person, did not appreciate the time limits that applied.

6. On 24 April 2024 I made directions in the following terms:

   *"The Respondent has made an application (attached) inviting the Tribunal to amend its order on the basis of a clerical error Rule 69 or for a reconsideration pursuant to Rule 72. The Respondent says that the Tribunal based its awards of compensation on weekly earnings of £450 but they were in fact £311. The Claimant should provide comments to both the Respondent and the Tribunal on the Application by 23 May 2023. The Respondent should provide any additional comments to the Claimant and the Tribunal by 1 June 2024.*

   *In anticipation of that:*

   1. *Basing the award on average earnings of £450 was not a clerical error but based on the Claimant's evidence. Rule 69 appears of no relevance.*

2. *Based on the information provided, there is a reasonable prospect of the application for reconsideration succeeding.*

3. *It is noted that the Tribunal based its award on the Claimant's income details as provided in ET1 in the sum of £450 per week. That figure was not challenged by the Respondent in ET3. The Respondent did not produce wage slips or other documents at the hearing to challenge the Claimant's income details. It is not clear why and the Respondent should explain why the admission was made in ET3 and why the pay slips were not disclosed earlier.*

4. *The pay slip details provided by the Respondent now show the Claimant to have earnt £11,817.08 over the 29 weeks prior to her dismissal. The average weekly wage appears to have been £407. The range of the Claimant's earnings was between £299.75 and £515.63 (ignoring holiday pay). It is noted that the Claimant's earnings began to increase as the summer months approached. The parties are invited to comment on these calculations and generally.*

5. *The Respondent is inviting the Tribunal to base its award on the Claimant earning £11 per hour for 28 hours a week or £308 per week. The Respondent is invited to comment specifically on how this tallies with the pay slips provided.*

6. *The application for reconsideration will be determined on paper subject to representations from the parties, including the application to apply out of time under Rule 5"*

7. The Claimant responded on April 2024 and asserted that:

   7.1 She objected to the Application for reconsideration being made out of time.

   7.2 Her hourly rate was in fact £12.50.

   7.3 Her average gross earning over the previous 12 weeks was £5,488 being an average of £457.34 per week.

8. I note the Claimant did not object to a paper determination of the reconsideration.

9. On 30 May 2024 the Respondent set out its position as being:

   9.1 The Claimant's wages should be assessed as being based on her last year of employment. The Claimant's P60 suggested a weekly wage of £365.58.

   9.2 The Claimant's calculations were "top heavy" owing to holidays not being taken, a recent increase in her hourly rate and bank holiday work.

   9.3 It was accepted that the Claimant's wage increased to £12.50 per hour.

10. I note too that the Respondent did not object to a paper determination.

11. Thereafter, the matter went into abeyance. It would appear that the file was not referred back to me. Nor did the parties chase up the position, though.

12. By e-mail dated 5 March 2025, the Respondent indicated that it was still pursuing its Application.

**The Law**

13. Rule 67 of the Employment Tribunal Procedure Rules (the Rules) allows the Tribunal to correct a Judgment arising out of a clerical error.

14. Rule 69 allows the Tribunal to reconsider any judgment if it is in the interests of justice to do so. This involves giving effect to the overriding objective at Rue 3 and deal with matters fairly and justly and in a way that ensures parties are on an equal footing, deals with matters proportionately, avoids formality, avoids delay and saves expense.

15. Reconsideration of a judgment may be in the interests of justice if there is new evidence that was not available to the Tribunal at the time it made its judgment. The principles are set out in *Ladd v Marshall 1954 3 All ER 745, CA*. In order to justify the consideration of fresh evidence, it is necessary to show that the evidence could not have been obtained with reasonable diligence for use at the original hearing, that the evidence is relevant and would probably have had an important influence on the hearing and also that the evidence is apparently credible.

16. In this case, an application for reconsideration ought to be made with 14 days of the written reasons being sent to the parties in accordance with Rule 69. That time may be extended under 5 having regard to the overriding objective in Rule 3.

17. Rule 70 sets out the procedure to be followed. This broadly involves dismissing the Application if it has no reasonable prospect of success (which I did not do

when the Application first came before me) and then allowing the parties to make representations (which they have done) and allowing the parties to object to the reconsideration proceeding without hearing (which they have not done).

**Findings**

18. In terms of the Application under Rule 67, I had already indicated that the Judgment in respect of the Claimant's notice pay was not a clerical error. That remains my very clear view. The Judgment was based on evidence that was submitted by the Claimant but not challenged by the Respondent.

19. In respect of the Application for reconsideration, the first issue I must consider is to whether allow it to be made out of time.

20. The delay is here is not insignificant, being nearly 2 months. The time limit and compliance with the Rules is important. It ensures efficiency and also, in this case, allows the parties to understand that matters have been fully concluded. However. having regard to the overriding objective I do allow the reconsideration to be heard out of time. In reaching this view, I accept that the Respondent acted in person and was not aware of the time limit. Further, I cannot see that there is any obvious prejudice to the Claimant by reason of the fact that the Application was made late.

21. However, I dismiss the Claimant's Application for reconsideration on the basis that it is not in the interests of justice to allow it. I reach this view for two reasons.

22. Firstly, the original decision was made based on the evidence that was in ET1. The Respondent did not dispute that evidence in ET3 or at the hearing and yet it was plainly, at that time, in a position to do so. I am now being asked to reconsider matters in light of new evidence that is being presented and so the principles in *Ladd* apply. Applying those principles, I do not consider it to be in the interest of justice to consider that fresh evidence. The Respondent could have produced the wage slips and other documents that it now relies upon at the hearing but did not. This is surprising given the Claimant's estimated wages were plainly set out in ET1 and the burden of producing evidence to rebut the Claimant's position was not at all an onerous one. Although the Respondent was acting in person, that does not justify the late production of the evidence now relied upon given its obvious importance and the ease with which it could be collated.

23. Secondly, even if I had been of the view that I should consider the Respondent's late evidence, it would not have altered the outcome. I am satisfied that it is perfectly reasonable to assess the Claimant's notice earnings based upon her previous 12 weeks' pay as she has done. The Claimant's working hours ranged between 20 and 40 hours per week and, given her role was in the hospitality trade, she plainly worked longer hours over the busier summer months. The best evidence of what the Claimant would have earned in

the 11 weeks' notice period is what she actually earned in the previous 11 or 12 weeks. By contrast, the Respondent's position that her notice earnings should be based on her previous 12 months' earnings is obviously flawed in that it those earnings do not, for example, take into account a pay increase awarded to the Claimant in that period for the entirety of the period.

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**Employment Judge Oldroyd**
Date: 6 March 2025

Sent to the parties on:
21 March 2025

Jade Lobb
For the Tribunal