# EMPLOYMENT TRIBUNALS

**Claimant:** **Miss Sandra Messi**

**Respondents:** **(1) Revolute Limited**
**(2) twentyAI Limited**
**(3) Cynthia Manuel**
**(4) Brenda Tovar**
**(5) Nik Storonsky**

# JUDGMENT FOLLOWING RECONSIDERATION

1. The Claimant's application made by e-mail initially on 20 February 2025 and in subsequent correspondence for a reconsideration of the tribunal's judgment dated 21 February 2025 and sent to the parties on 10 March 2025 has no reasonable prospects of success and is dismissed.

2. The application was totally without merit.

# REASONS

**The rules**

1. The Employment Tribunal Procedure Rules 2024 set out the rules governing reconsiderations. The pertinent rules are as follows:

> *"Principles*
>
> *68. - A 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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*
>
> *Application*
>
> *69 - Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties)*

*within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

*Process*

*70.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

*(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.*

2. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in ***Ministry of Justice v Burton and Anor*** **[2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

*"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

3. In ***Liddington v 2Gether NHS Foundation Trust*** **EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> *"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 by 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."*

4. Any preliminary consideration under rule 70(1) must be conducted in accordance with the overriding objective which appears in rule 3, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay.

**Discussion and Conclusions**

5. On 21 February 2025 I heard Ms Messi's application for interim relief brought under Section 128(1)(a)(i) of the Employment Rights Act 1996. Ms Messi contended that her dismissal was automatically unfair contrary to Sections 94 and 103A of the Employment Rights Act.

6. Ms Messi had applied to postpone the hearing. She had also asked that the application be dealt with on the papers. REJ Burgher dealt with that application and refused it.

7. There was no real dispute about the test I needed to apply. My task was to conduct a summary or review type assessment of the materials available to me in reaching my decision, consistent with the approach suggested in ***Raja v SS for Justice*** **UKEAT/0364/09/CEA**:-

> *25. What a Tribunal has to do in an application for interim relief is to examine the material put before it, listen to submissions and decide whether at the final hearing on the merits "that it is likely that" that Tribunal will find that the reason or reasons for the dismissal is one or more of those listed in section 129(1).*

8. In assessing whether the Claimant was entitled to relief under sections 128-129 ERA 1996 the Tribunal must decide whether it appears, at this early stage, on the materials presented, that the Claimant has a pretty good chance of succeeding in his s.103A ERA 1996 claim at a final hearing, which includes as to each of the constituent parts of that claim. See: **Taplin v C Shippam Ltd [1978] ICR 1068, EAT**, followed in **Dandpat v University of Bath UKEAT/0408/09** and **London City Airport v Chacko [2013] IRLR 61, EAT**.

9. The constituent parts of a claim brought in reliance on Section 103A are:

9.1. That the Claimant needs to show that she is an employee of the Respondent she says dismissed her; and

9.2. That she made disclosures that were both qualifying and protected disclosures for the purposes of Sections 43A and B of the Employment Rights Act 1996; and

9.3. That she was dismissed (not an issue here); and

9.4. That the reason, or if more than one, the principle reason for the dismissal was that she had made a qualifying disclosure.

10. I was provided with a 'Recruitment Services Agreement' between Revolute Limited and Twenty Recruitment Limited. The agreement provides headline terms under which Twenty Recruitment Limited were to supply temporary workers to Revolute Limited. Twenty Recruitment Limited later changed its name to twentyAI Limited.

11. I was provided with a Statement of Work which was issued on 23 October 2024. Under that agreement twentyAI (the Supplier) agreed to provide the services of the Claimant to Revolute Limited (the Client). The duration of the Contract was said to be 11 November 2024 to 14 February 2025 but subject to a clause requiring 1 week's notice of any earlier termination.

12. The Respondents provided me with information from Companies house that told me that the Claimant incorporated Zoogla Limited on 25 October 2024. She is the sole director and shareholder of that company.

13. I saw a contract dated 4 November 2025 between Zoogla Limited and twentyAI Limited. Under this agreement Zoogla agreed to supply the Claimant to undertake the work set out in the Statement of Work.

14. Having examined those materials I formed the view that the Claimant did not have a pretty good chance of establishing that she was an employee of any of the Respondents. I reached that conclusion because I considered that the tribunal at the final hearing was very likely to recognise that the arrangements that were entered into were typical of a temporary worker supplied through an agency.

15. The Claimant was unable to identify any express contract between her and Revolute Limited. In order to show that Revolute Limited was her employer she would have to establish that there was an implied contract. The test for the implication of a contract is that it is necessary to explain the relationship. See ***James v Greenwich London Borough Council*** **2008 ICR 545, CA and** ***Tilson v Alstom Transport*** **2011 IRLR 169, CA**. That is a high threshold.

16. The Claimant expressly disavowed the suggestion that she was employed by twentyAI. I consider that concession to have been rightly made. The documents I have referred to above indicate that the role of twentyAI was that of an employment business. Whilst such an arrangement might amount to employment with the agency the lack of day-to-day control is likely to be fatal to such a suggestion – see ***Dacas v Brook Street Bureau*** **(UK) Ltd 2004 ICR 1437, CA.**

17. The Claimant did not suggest that she was employed by any of the individual respondents.

18. I then looked at the things said by the Claimant that were said to amount to qualifying disclosures. It appeared to me that Claimant had raised issues that could reasonably be believed to include information tending to show that Revolute Limited had breached legal obligations concerning data protection and duties under the Equality

Act 2010. However, all the Claimant's complaints related to her own treatment. I reminded myself that Section 43B says that for a disclosure to be a qualifying disclosure it is necessary that the Claimant reasonably believed that her disclosures were in the public interest. I had regard to the guidance in ***Chesterton Global Ltd & Anor v Nurmohamed & Anor*** **[2017] EWCA Civ 979**. I decided that the Claimant's prospects of showing that any belief that the disclosures were in the public as opposed to her personal interest was objectively reasonable fell below the threshold of 'likely'.

19. Having decided that it was not 'likely' that the Claimant will show she was an employee or that she made qualifying disclosures it was not necessary for me to deal with the merits of the causation argument (i.e. that the principle reason for the dismissal was that she had made qualifying disclosures.

20. I did not need to deal with the Respondent's contentions that the Claimant has been held to be a vexatious litigant engaged in a money making scheme and uses the Tribunal system abusively.

21. The Claimant asked for a reconsideration of my decision. She did not originally say why she said it was in the interests of justice to reconsider my judgment. I caused a letter to be written to the Claimant inviting her to set out her reasons. I briefly gave her the same explanation of why her application for interim relief was rejected that I set out above.

22. On 24 April 2025 the Claimant sent an e-mail to the Tribunal including her response to my letter. She says:

*'it is in the interest of justice to reconsider your decision not to grant me interim relief because the tribunal did not apply the correct law in regards to causation, relied on irrelevant information by counsels when they referred to Other claims and judgements that were not relevant to this interim relief which is a tactic often deployed by barristers, lawyers and respondents representatives to try and influence a judge in making a decision to in favour of their clients'.*

23. I did not misapply the law with regards to causation. I made no finding about the issue of causation as I had determined the application on the basis of my assessment of the issues I have outlined above. Furthermore I did not deal with the question of whether the Claimant's claims might be undermined by reference to the many claims she had brought in the past. The fact that I did not deal with those matters means that I cannot have misapplied the law in respect of those points.

24. The Claimant has indicated, through attaching authorities to her e-mail that she believes that the case of ***Uber BV and others v Aslam and others*** **[2021] UKSC 5** has a bearing on her case. I would accept that that decision is a reminder to tribunals that written documents may not reflect the true relationship between parties. I had that well in mind when I assessed the merits of the Claimant establishing she was an employee. There is nothing in ***Uber v Aslam*** that dilutes the requirement of a contract to establish an employment relationship. That is a statutory requirement set out in Section 230 of the Employment Rights Act 1996. There is nothing in ***Uber v Aslam*** that suggests that where, in the absence of an express contract, the test for

implying a contract is anything less than necessity. On the contrary, that appeared to be the basis upon which Lord Leggat decided the case – see Paragraph 56.

25. The purpose of a reconsideration is not to permit a party dissatisfied with a decision to keep the same arguments running through correspondence as were made at the hearing. There is an interest in finality of litigation. The decision I had to take was very straightforward. It was based on my assessment of the prospects of success of the unfair dismissal claim and that alone. I did not say that the claim would certainly fail. I simply decided on the basis of the materials that I was provided with that the Claimant could not show that the merits were as high as a 'pretty good chance of success'. The Claimant's application provides no reason why I should reconsider my judgment. I consider that the Claimant's application, as presented, it was totally without merit.

26. This judgment is not intended to deal with the other matters set out in the Claimant's e-mail of 24 March 2025.

**Employment Judge Crosfill**

**Dated: 24 March 2025**