



EMPLOYMENT TRIBUNALS

Claimant: Mr. N. Bradly

Respondent: British Airways Plc.

JUDGMENT

The claimant's application dated 15 January 2025 for reconsideration of the judgment, sent to the parties on 4 January 2025 is refused as it has no reasonable prospects of success.

REASONS

Legal Principles

1. Rules 68-70 of the Employment Tribunal Procedure Rules 2024 provide as follows:

68. Principles

- (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.

69. Application for reconsideration

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.

70. Process for reconsideration

- (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.

2. In summary the Tribunal has the discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 70(2) requires the judge to dismiss an application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 70.

3. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

4. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

5. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

6. It is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

7. As was stated in *Ebury Partners Uk Limited v Mr M Acton Davis*: [2023] EAT 40:

The employment tribunal can therefore only reconsider a decision if it is necessary to do so “in the interests of justice.” A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a “second bite of the cherry” and the jurisdiction to reconsider should be exercised with caution.

The application

8. On 15 January 2025, the Claimant made an application for reconsideration which was in time, being 11 days after the Judgment was sent to the parties. The claimant’s application was copied to the respondent. The application was referred to me for the first time on 4 March 2025. Neither party has requested written reasons of the Judgment.

9. The application alleges that the Judgment “seems to have avoided addressing numerous points raised in my witness statement and has made some factual errors”.

10. I have considered the claimant’s application and the grounds he sets out for his application, and I have concluded that there is no reasonable prospect of variation or revocation of the original decision. The grounds relied on are matters that were raised at the hearing, or which could have been raised at the hearing. The application for reconsideration does not raise any error of law, any procedural error or any other matter which would make reconsideration necessary in the interests of justice.

11. I refer to the claimant’s main grounds for the application as follows, by reference to paragraph numbers in the claimant’s email:

Paragraphs 4 to 12, 17 to 23, 26 and 27 relate to the facts found by the tribunal and the conclusions drawn from the facts found. The rules relating to reconsideration are not intended to provide parties with a rehearing or an opportunity to rehearse the same arguments.

Paragraphs 13, 24 and 25 relate to evidence which the claimant could have referred the tribunal to in the hearing. The claimant chose to rely on extracts from the recording. See paragraph 16 of the application. The rules are not intended to give parties an opportunity to present new evidence that could have been presented prior to judgment. In any event the document was not before the respondent or Nicky Jones at the time of the hearing (see response to paragraph 14 below).

Paragraphs 12, 14 and 15 indicate a misunderstanding of the issues the tribunal is required to address. The tribunal is required to decide whether the employer had a genuine belief in the employee’s guilt, on reasonable grounds and after carrying out a reasonable investigation. The tribunal is required to decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

12. The claimant’s application for reconsideration is accordingly refused under rule 70(2).

Approved by:

Employment Judge S. Matthews

21 March 2025

JUDGMENT SENT TO THE PARTIES ON
3 April 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/