



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Dean Owens-Cooper

**Respondent:** Odeon Cinemas Limited

**Heard at:** London Central Employment Tribunal **On:** 23 February 2024

**Before:** Employment Judge H Clark (sitting alone)

## RECONSIDERATION

The Claimant's application for a reconsideration of its order dated 8 January 2024 is refused.

## SUMMARY

In summary, the reason for the refusal of the claimant's application for reconsideration is that the points made have already been considered by the Tribunal when it made its decision. No new information or evidence has been provided to suggest that the original decision should be changed.

## REASONS

1. By an email dated 17 February 2024 the claimant asked for a reconsideration of the Tribunal's judgment of 8 January 2024, which was sent to the parties on the 11<sup>th</sup> January 2024. In that judgment the claimant was ordered to pay the respondent's costs of the proceedings limited to £10,000.
2. The claimant's application provided as follows:

*"I am only just seeing this as I have fairly seriously unwell and with self harm incidents. ET and Angela, I did cancel way back when there was a data breach from M&R as I was sent another clients confidential information. The tribunal called me and I verbally cancel the matter, they asked me to email and I did which I have also just forwarded on to the court. I was in no way in a fit state or of sound mind to engage in a hearing, but even with the date breach I was clear I retracted the application from me. I have not got 10k to give and this is unfair."*

3. The claimant sent a two further emails on 17 and 21 February 2024. In the email dated 17 February 2024, he asked for confirmation that the case had been cancelled in accordance with his email dated 23 August 2023. In his email dated 21 February 2024 he re-iterated that he had withdrawn his claim back in August 2023 and that he could not afford to pay the costs order. He referred to a number of physical and mental health circumstances as reasons for his delay in requesting a reconsideration of the Tribunal's order. The claimant has not provided any evidence in support of his reconsideration application beyond copying his email to the Tribunal dated 23 August 2023.
4. Under rule 71 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the time limit for making an application for the reconsideration of a judgment is 14 days. Rule 5 of the 2013 Rules provides for a general discretion to extend any time limit under the 2013 Rules, including of the Tribunal's own initiative. Such a discretion is subject to the overriding objective in rule 2 of the 2013 Rules to deal with cases fairly and justly, which includes ensuring the parties are on an equal footing, dealing with cases in a proportionate manner, avoiding delay and saving expense.
5. For the following reasons, the Tribunal extends time to permit an application for reconsideration to be made by the claimant:
  - 5.1 The delay is not substantial (less than one month);
  - 5.2 The claimant is unrepresented and suggests he has been struggling with health issues recently.
  - 5.3 The claimant's claim concerned a learning difference (dyslexia) for which it would be reasonable to grant additional time for written tasks.
  - 5.4 It would be disproportionate and contribute to the cost and delay in dealing with this application to require the claimant to obtain and possibly pay for medical evidence in relation to the reasons for his delay in making this application.
  - 5.5 The costs order concerns a large sum of money (£10,000), so is a matter of importance to both parties.

The Tribunal, therefore, considers it to be in the interests of justice to determine the application.

### The Law

6. The Tribunal has the power to reconsider its Judgments under rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 where it is "*necessary in the interests of justice to do so.*" Whilst the claimant is requesting the reconsideration of an order, a costs order is a judgment as defined in rule 1(3)(b) of the 2013 Rules.
7. Examples from case law of circumstances where the interests of justice might require a reconsideration are: where relevant evidence subsequently comes to light which was not available at the time of the hearing, where a material error in the procedure at a hearing leads to an injustice, where a party did not have

notice of a hearing or where the parties and Tribunal proceed on the basis of a mistaken understanding of the law. The Rules themselves do not define such circumstances (although used to do so), so the Tribunal has a wide discretion, although the “interests of justice” refers to the interests of both parties, not just the disappointed party (*Redding v EMI Leisure Ltd EAT 262/81*).

8. Pursuant to rule 72 of the 2013 Rules, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, there is no need to invite the parties’ views as to whether the application can be determined on paper or whether a further hearing is needed.
9. The reconsideration procedure should not be used simply as an opportunity for an unsuccessful litigant to re-argue his or her case. There is a public interest in the finality of litigation, which is not furthered if parties are permitted to make more detailed or different submissions to those which they made at the first hearing, to put their claim on a different basis in light of the Tribunal’s findings or to adduce evidence which was reasonably available to them before the determination was made.
10. Any power under the 2013 Rules should be exercised in accordance with the overriding objective in rule 2 as set out above. This includes ensuring that parties are on an equal footing.

#### The Application

11. The claimant’s application puts forward three broad reasons why the costs order made was unfair. Firstly, because he had withdrawn his claim against the respondent on the 23 August 2023, secondly, because he cannot afford to pay it and, thirdly, because he has been experiencing ill health.

#### Circumstances of the Costs Order

12. The chronological background to these proceedings is set out from paragraph 14 of the Tribunal’s Reasons for making the costs order it did. The claimant had notice of the respondent’s original application for costs dated 6 October 2023, which was due to be heard by the Tribunal at a hearing on the 2 November 2023 along with an application to strike out the claimant’s claim for his unreasonable conduct of the proceedings and his failure to actively pursue it. The claimant did not attend that hearing or provide any written submissions for it. In the event, the costs application was not determined then, as the respondent wished to revise its application in light of its discovery that the claimant had issued other Employment Tribunal claims which he had not prosecuted.
13. On 2 November 2023 the Tribunal made the following order:
  - 13.1 “On or before 16 November 2023 the Claimant is ordered to provide evidence of his means to pay any costs order which the Tribunal might make.
  - 13.2 The Respondent’s application for costs will be determined without a further hearing, subject to any applications by the parties otherwise.

Any written submissions should be sent to the Tribunal to arrive by 16 November 2023.”

14. The respondent served its second application for costs on the claimant on 16 November 2023. The claimant responded to it in writing on the same day (and did not apply for an oral hearing of the costs application). His response was as follows:

*“I have not had communication about this. I told the respondent I would not be sharing any info with Mills and Reaves due to a data breach. I also told the ET this on the phone and in email. So I am sorry I will be paying any costs. I am vulnerable disabled man living alone with a recent suicide attempt cost will and can not be paid.”*

#### Claim Already Withdrawn In August

15. In his written response to the costs application, the claimant did not assert that he had already withdrawn his claim against the respondent in August 2023, but that, *“I told the respondent I would not be sharing any info with Mills and Reaves due to a data breach. I also told the ET this on the phone and in email.”* The suggestion that the claimant had withdrawn his claim was made for the first time by the claimant after the costs order was made. There is no reason why the claimant could not have made this submission on the 16 November 2023.
16. Although the claimant did not suggest he had withdrawn his claim before the costs order was made, the Tribunal specifically considered this possibility of its own motion, pursuant to its obligations under rule 2 of the 2013 Rules. This is set out in paragraph 28 of the Tribunal’s Reasons for the costs order dated 8 January 2024. The Tribunal concluded that the claimant was not intending to withdraw his claim, simply that he did not wish to take part in the proceedings whilst the respondent was represented by Mills and Reeve. If there was any confusion in the claimant’s mind (as set out in paragraph 28 of the Reasons), it should have been clear to him that he had not withdrawn his claim when it was listed for a further hearing on 14 September 2023 (and then another one on 2 November 2023). The Tribunal’s reasoning is not undermined by the claimant’s recent assertion that he withdrew his claim in August 2023. The fact that it has taken the claimant 6 months to suggest he withdrew his claim in August 2023 diminishes its strength. There is nothing in the claimant’s application for reconsideration which leads the Tribunal to believe that it should have reached a different conclusion concerning the claimant’s email dated 23 August 2023.

#### The Claimant’s Ability to Pay

17. The claimant has raised a number of concerns relating to his ability to pay the costs ordered. He was ordered to provide evidence of his “means to pay any costs order the Tribunal might make” prior to the Tribunal’s decision. Apart from stating “cost will and can not be paid”, the claimant did not offer any details about his financial circumstances, still less provide any evidence in support. The claimant does not challenge the Tribunal’s finding that he remains in employment, but he is concerned that he might not be able to obtain a mortgage in future or alternatively that he might lose his accommodation. Such

submissions could have been made and supported by evidence in November 2023.

18. The Tribunal appreciates that £10,000 is a large sum of money for most people to afford. In the absence of any evidence from the claimant as to his means, the Tribunal nonetheless took judicial notice of this fact in paragraph 43 of its Reasons. The Tribunal also took into account the disparity in the parties' assumed abilities to pay for representation in reaching the sum of £10,000 (paragraph 44 of its Reasons). There remains no information about the claimant's specific financial circumstances (his income from employment and/or benefits, expenditure, accommodation, assets, debts). As such, there is no prospect of the Tribunal's reviewing its decision on the amount of the costs order in the interests of justice.

### The Claimant's Health

19. The claimant has provided more details of his long-term health conditions in his application for reconsideration, but no medical evidence as to the impact they might have had on his ability to engage in the proceedings, which he initiated. The Tribunal appreciates that participation in litigation can be stressful and disappointing outcomes are likely to exacerbate such stress. However, the Tribunal does not have medical expertise, so if either parties' health circumstances materially affect a decision which the Tribunal is asked to make, it is for the parties themselves to present that evidence. As a claimant in a number of disability discrimination claims over recent years, the claimant can be expected to be aware that evidence of disability/ill health needs to be supported by medical evidence.
20. The Tribunal is used to making reasonable adjustments for litigants with a range of disabilities or other differences. The claimant made reference to his being a vulnerable disabled person in his written submission prior to the costs order and to mental health challenges. He did not explain how his ill health or other conditions might impact his ability to pay a costs order and has not done so in his reconsideration application. Ill health or disability can obviously affect a person's ability to work, but the Tribunal's understanding that the claimant remains in employment (paragraph 43 of the Reasons) has not been challenged.

### Conclusions

21. The claimant's reasons for his request for a reconsideration either were or could have been made in his response to the respondent's costs application. The claimant was given an opportunity to provide evidence of his means prior to the order's being made, but he did not do so or request additional time or any other adjustments to the process (such as a hearing). It may well be that the claimant did not put forward his best defence to the respondent's application for costs and, in hindsight, the claimant regrets that. He was given the opportunity to attend a hearing on the 2 November 2023 to give oral reasons why a costs order should not be made and then a second opportunity to do so in writing. It is not the function of a reconsideration application to provide yet more opportunities to a party to provide evidence or make additional submissions which they could and should have put forward prior to the judgment's being made. To do so would

be unfair to the other party and contrary to the public interest in the finality in litigation.

22. As outlined above, the three points made by the claimant in his reconsideration application were considered by the Tribunal in its decision of the 8 January 2024. The claimant's application is seeking to emphasise or expand on the submissions he made on the 16 November 2023 in light of the Tribunal's order. It is an attempt to re-litigate the costs decision, but with no materially different submissions and no detail about his financial circumstances or supporting evidence. In these circumstances, the Tribunal is satisfied that there is no reasonable prospect of the original decision being varied or revoked and the interests of justice do not require the matter to be re-opened.
23. The claimant should be aware that the Employment Tribunal does not have the power to enforce the costs order. The claimant will have the opportunity to address a court as to his ability to pay the award in the event that the respondent seeks to enforce the costs order through the courts. A list of organisations which offer free legal advice will be provided to the claimant with this decision.

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Employment Judge Clark

Dated: 23 February 2024

DECISION SENT TO THE PARTIES ON

6 March 2024  
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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS