



EMPLOYMENT TRIBUNALS

Considered at: London South

By: Employment Judge Tueje

Claimant: Ms Elaine Masters
Respondent: London Underground Limited

Date of reconsideration: 10th April 2025

JUDGMENT ON RECONSIDERATION

1. The claimant's request for reconsideration is refused, and the Tribunal's reserved judgment dated 25th February 2025 is confirmed.

REASONS

2. There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.

BACKGROUND

3. The claimant is employed by the respondent as a Trains Manager.
4. Her claim, brought under section 47(B) of the Employment Rights Act 1996, was presented to the Tribunal on 20th October 2022.
5. The final hearing was originally listed as a 7-day hearing. However, due to the lack of availability of judges and non-legal members, the claim was heard by a judge sitting alone over 5 days from 9th to 13th December 2024.
6. The reserved judgment is dated 25th February 2025, and was sent to the parties on 27th February 2025.
7. By two separate e-mails sent to the Tribunal on 13th March 2025 the claimant e-mailed the Tribunal with a request for reconsideration, which were forwarded to EJ Tueje on 17th March 2025. The claimant submitted various pdf documents in support of her request for reconsideration which were labelled as follows:
 - 8.1 Bundle page 393;
 - 8.2 Bundle pages 406 – 408;

- 8.3 Bundle page 416;
- 8.4 Bundle page 437;
- 8.5 Bundle pages 528 & 532
- 8.6 Bundle page 531;
- 8.7 Bundle page 535;
- 8.8 Bundle page 792;
- 8.9 Bundle page 802;
- 8.10 Page from Appendix 2;
- 8.11 Appendix 13; and
- 8.12 2022-5-20th & 31st Claimant's e-mails to Steve Manuel.

APPLICATIONS FOR RECONSIDERATION

8. By rules 68 and 69 of the Employment Tribunals Rules of Procedure 2024, a Tribunal may reconsider any judgment on the application of a party, where it is necessary in the interests of justice to do so. Under rule 70(2) of the 2024 Rules, an Employment Judge shall consider any such request, and:

“... If the judge 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.”

9. The claimant's request for reconsideration is set out under two headings: Findings of Fact, and Bundle Issues.

Findings of Fact

10. The claimant states:
- 3. *At [24], the judgment sets out the list of issues regarding the different detriments I was subjected to. These start with my annual performance review using the My Journey system in 2022 which the Judge made findings on.*
 - 4. *At [72], the Judge found that Mr Manuel carried out my annual performance review on 4 April 2022. However, this finding is not possible for the following reasons:*
11. The claimant sets out at paragraphs 4a. to 4f. the reasons why she disagrees with the Tribunal's findings of fact.
12. The Tribunal considers the claimant's arguments at paragraphs 4a. to 4f. of the request for reconsideration amount to re-arguing issues raised during the final hearing. These matters were addressed at paragraphs 64 to 75 of the reserved judgment, which detailed the Tribunal's reasons for concluding the claimant's 2022 annual performance review had been carried out. The Tribunal's findings reflect the claimant's witness statement which states (original typological anomalies are replicated):

In March 2022, at my estimate, TOM Manuel called me into his office. He clicked through slides, explaining from each how the MyJourney process would work;

On DATE, I inputted detailed MyJourney notes. I was excited that this could be the best attempt to date by LU to tie whether people were considered for career moves to their actual experience (, albeit still skeptical in light of behaviours around promotions already mentioned).

On 4th April 2022, TOM Manuel sent me an invitation to an “end of year review.” (Exhibit).

13. Although the request for a reconsideration at paragraph 4c. states the claimant could not input information for the review, the above extract from her witness statement suggests she did input notes on the My Journey system, the order of the paragraphs also suggests she input information before receiving the invitation to attend a meeting on 4th April 2022. That finding is reflected at paragraph 68 of the reserved judgment. In any event, there were a number of reasons why the Tribunal concluded the claimant’s 2022 annual performance review was carried out (see paragraphs 72 to 74 of the reserved judgment).
14. Paragraph 4e. of the request for reconsideration refers to an electronic audit trail at page 792 of the hearing bundle, which the claimant says shows her first input was completed on 14 April 2022. That is not what the document shows: it shows that the claimant’s action was a modification, and that modification was completed on 14th April 2022. It is insufficient to undermine her own written evidence which suggests that she input details on an unknown date before 4th April 2022.
15. The claimant argues at paragraph 6 of the request for reconsideration that there was no data on the My Journey system for Ms Waite to review. However, that matter was dealt with at the final hearing, and the tribunal’s findings of fact are recorded at paragraph 78 which states Ms Waite reviewed the My Journey data. Ms Waite was not challenged about this during cross examination, which would have been the appropriate opportunity to do so. Therefore, it is inappropriate for this to be dealt with by way of a reconsideration.
16. At paragraphs 6 and 7 of the request for reconsideration, the claimant seeks to impugn Mr Manuel’s credibility. However, paragraph 75 of the reserved judgment already addresses that point. It begins:

As to the performance rating Mr Manuel gave the claimant, I find his rating was based on his genuine belief that it reflected her performance.

17. Paragraph 75 then continues by providing reasons for concluding Mr Manuel acted in good faith.
18. Therefore, the findings of fact which the claimant seeks to challenge in the request for reconsideration relate to matters that were already raised at the final hearing, and which the Tribunal determined based on the evidence and arguments

presented by the parties. Accordingly, these grounds fail to meet the rule 70(2) threshold.

Bundle Issues

19. The claimant has various complaints regarding the bundles, which are set out below.

20. Firstly, the claimant's request for reconsideration states (at paragraph 11):

I also sought an adjournment of the final hearing from the Tribunal when I realised the extent of the bundle issues. The Respondent opposed and the Tribunal refused my request.

21. The above relates to the claimant's e-mail sent to the Tribunal on 26th November 2024 at 8:49am, requesting the final hearing is postponed, setting out her reasons, which included issues regarding disclosure. She also referred to the respondent having suffered a cyber-attack in that e-mail. As stated in the above extract from the request for reconsideration, the Tribunal refused the claimant's request for a postponement; that refusal was in its letter dated 3rd December 2024.

22. The request for reconsideration continues:

9. Many of the issues above flow from issues with the bundle. The Respondent repeatedly obstructed me when attempting to prepare the bundle for the final hearing.

10. Leading up to the hearing, I requested specific disclosure which delayed or refused because of the cyber-attack affecting the Respondent. It was therefore difficult to know whether the Respondent had complied.

23. This ground relates to a second e-mail the claimant sent to the Tribunal on 26th November 2024 at 10.43am requesting specific disclosure and additional disclosure, detailing the communications between the parties about this issue, culminating in the Respondent's refusal to provide the requested disclosure, which prompted the claimant's request to the Tribunal.

24. By a letter dated 3rd December 2024, the parties were notified that the claimant's request for specific disclosure was refused, it being unclear to the Tribunal how the specific disclosure sought would be of assistance.

25. There was no appeal against the Tribunal's refusal to order specific disclosure and its refusal to postpone the final hearing.

26. In the circumstances, the matters raised at paragraphs 9 to 11 of the request for reconsideration are issues that the claimant has already raised, which have been considered and dealt with by the Tribunal. Therefore, these grounds fail to meet the rule 70(2) the threshold.

27. The request for reconsideration further argues:

12. *The Respondent offered to send the bundle to my home on the Saturday before the hearing began on the Monday. The Respondent then told me I could only have the bundle on the Monday when the hearing began. I therefore did not have enough time to detect which documents may have been excluded from the bundle without my express agreement.*
13. *The email the Respondent sent around that time supposedly containing the finalised bundle index instead displayed text indicating the attachment had been removed from the email).*
14. *I was left with no choice other than to construct my own folder of documents with no time to paginate, otherwise it risked chunks of documents not being included for the final hearing. I was therefore denied a fair and proper opportunity to take the Judge to relevant documents and to put forward my case.*
15. On 6th December 2024 the parties exchanged a series of e-mails regarding the claimant's difficulties opening the bundle. At 2.01pm the Respondent's solicitor asked the claimant whether she'd been able to open the bundle; at 3.48pm on 6th December 2024, the claimant responds: *"I have opened it now."*
16. Therefore, while the claimant experienced difficulties opening the bundle, her e-mail suggests this was resolved. At the hearing, the claimant reiterated the difficulties that she'd experienced opening the bundle e-mailed to her, and also explained she was expecting a copy of the bundle to be couriered to her, which she said hadn't been delivered. However, according to the parties' above e-mail exchanges, by that time, she had accessed the electronic bundle,
17. The claimant also appears to have had sufficient time to review the bundle to identify that certain documents she expected to be included were omitted, and she collated the documents she believes were omitted from the bundle that she brought to the final hearing. This is addressed at paragraph 10 of the reserved judgment. Regarding documents being omitted from the bundle, this was the issue she focussed on during the hearing, which is why most of day 1 was spent dealing with documents, which broadly reflects paragraph 12 of the request for reconsideration. This time was spent trying to ensure that all the documents the claimant wanted the Tribunal to consider were before the Tribunal. Furthermore, all the documents the claimant brought to the hearing were admitted, and she confirmed that all documents she wanted to rely on were before the Tribunal. Therefore admitting the documents the claimant wanted to rely on but could not find in the bundle prepared by the respondent addressed any potential prejudice arising from her only accessing the bundle the Friday before.
18. The claimant complains that there are two documents omitted from the bundle and/or not specified in the index.
19. The first is addressed at paragraph 15a. of the request for reconsideration. It concerns an e-mail the claimant sent to Mr Manuel on 20th May 2022 explaining she authorised time off for a train operator, Mr Boyd, because he worked overtime

the day before to prevent the last train being cancelled. The claimant cross examined Mr Manuel about this. However, it was not directly relevant to an issue that needed to be determined. Mr Manuel had given the claimant the lowest performance rating. His written evidence explains his reasons were he considered the claimant was not fulfilling all aspects of her role, and that she had authorised an employee taking annual leave on a strike day. The Tribunal accepted those were his reasons at paragraph 69 of the reserved judgment. Therefore, the circumstances in which the claimant had authorised Mr Boyd's time off was not part of the reasoning. In any event, following the claimant's internal grievance, the performance rating Mr Manuel awarded was upgraded.

20. The second document is addressed at paragraph 15b. of the request for reconsideration, the claimant argues that the timeline she gave to Mr Victor in support of her grievance was not specifically referenced in the index to the bundle. It seems to be accepted that these documents were included at pages 528 and 532 of the bundle, although as the claimant correctly states, they were not specifically identified in the index. However, it is unclear how reference to these documents would have had any impact on the Tribunal's determination. That is because the claimant appealed against the grievance investigated by Mr Victor. Her appeal was dealt with by Mr Tollington. At paragraph 134 of the reserved judgment, the Tribunal notes that Mr Tollington, was satisfied that Mr Victor accurately understood the chronology of events when conducting the grievance. Therefore, whether or not the bundle's index specifically referenced the claimant's timeline the claimant, Mr Tollington concluded Mr Victor had carried out the grievance investigations appropriately and that he understood the chronology. Additionally, the Tribunal concluded Mr Tollington had conducted the appeal against the outcome of the grievance appropriately (see paragraph 245 of the reserved judgment).

CONCLUSION

21. The claimant's reasons for requesting a reconsideration do not disclose any arguments that have a reasonable prospect of successfully establishing that it is necessary and in the interests of justice to reconsider the decision.
22. Accordingly, these points fail to pass the sift stage at rule 70(2).

Approved by
Employment Judge Tueje
Date: 10 April 2025

Sent to the parties on
Date: 11 April 2025