



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Nesrin Habib

v

**Respondent:**  
Leightons Limited

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 68 of the Employment Tribunals Rules of Procedure 2024 (“**Rules**”), the claimant’s application of 7 March 2025 for reconsideration of the judgment given orally on 5 March 2025 and written reasons is refused because there is no reasonable prospect of the original decision being varied or revoked. In arriving at this decision, the Tribunal has also considered the ‘additional notes’ provided by the claimant after the original request for reconsideration notwithstanding these were submitted out of time.

## REASONS

1. The claimant did not succeed in her complaints of unfair dismissal, direct race discrimination, and harassment related to race.

### ***Principles of Reconsideration***

2. When approaching any application, and during the course of proceedings, the Tribunal must give effect to the overriding objective found at Rule 3 Employment Tribunals Rules of Procedure 2024. This says:

*“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*

- (c) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) *avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) *saving expense.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."*

3. The power to confirm, vary or revoke a judgment is found at Rule 68. That provides that a Judgment can be reconsidered "*if it is in the interests of justice to do so*". Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.
4. By rule 68, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
5. Rule 70 (1) and (2) of the Rules provides:  
  
*"A Tribunal must consider any application made under rule 69. 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 shall be refused, and the Tribunal shall inform the parties of the refusal. ..."*
6. Where an Employment Judge refuses an application following the application of Rule 70 (2), then it is not necessary to hear the application at a hearing.
7. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be guarded against (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).
8. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board [1975] ICR936*, who said "*it is very much in the interests of the general public that proceedings of this kind should be as final as possible*". He also said it was unjust to give the loser in litigation a "*second bite of the cherry*" where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

9. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (Ladd v Marshall [1954] EWCA Civ 1):
- 9.1. the evidence could not have been obtained with reasonable diligence for use at the trial;
  - 9.2. the evidence would probably have an important influence on the result of the case; and
  - 9.3. the evidence must be apparently credible.

***Grounds and reasons of reconsideration application***

**Procedural unfairness affecting my ability to present my case**

- 10. The claimant refers to a failure to consider key evidence including documents withheld or misrepresented by the respondent.
- 11. The claimant did not at the hearing inform the Tribunal that any relevant documents were missing from the bundle. Notably she has not submitted any additional evidence and has simply made attempts to revisit matters which evidence was heard about and findings of fact were made.
- 12. There is no clarity (even in the request for reconsideration) of what evidence has been withheld by the respondent. It is to be noted the claimant had ample opportunity to cross examine the respondent's witnesses not only in relation to her complaints but also in relation to any missing evidence/documents if this was in issue.
- 13. There was no legal error in failing to assess her whistleblowing disclosures and issues affecting public safety as these were not relevant to the issues in this case. Mrs Habib does not appear to grasp that she has already previously had a final hearing in relation to those complaints brought by her as a separate claim.
- 14. Insofar as any unfair treatment and breach of confidentiality were relevant to the complaints which were before the Tribunal, findings of fact were made about those matters. The claimant has not specified what precisely she says was not properly assessed. If they were relevant to the issues and were not addressed by the claimant in cross examination the Tribunal will not have been able to find she had discharged her burden of proof.
- 15. There is no 'key evidence' or documents which the claimant identifies that was not available at the hearing. The Tribunal assessed all the oral evidence and witness statements, and any documents referred to in the bundle insofar as they were relevant to the issues in the claims.
- 16. This application for reconsideration is refused for having no reasonable prospects of success.

**Procedural Unfairness – denial of a fair hearing**

17. The claimant identifies no specific examples of when she was interrupted.
18. She was permitted considerable leeway in her cross examination precisely because she was a litigant in person. She was informed the Tribunal would not be cross examining the witnesses for her and was repeatedly brought back to the issues in the case and given the opportunity to raise relevant questions.
19. She had a tendency to stray off point and ask questions which were irrelevant to the complaints. I was mindful of the overriding objective and ensuring a fair trial for both parties. This inevitably meant interrupting Mrs Habib if she was raising questions which were irrelevant. This is no criticism of Mrs Habib. She clearly did not understand the matters which we needed to hear evidence about in order to make decisions about her complaints. It was explained to her repeatedly what the issues were. The list of issues had been agreed by her.
20. The claimant was permitted sufficient time to cross examine the respondent's witnesses. The only time she was interrupted was when her questions were not questions (she was making statements/giving evidence), or what she was trying to ask was unclear, and/or when she was raising matters not relevant to the issues in her claims.
21. Notably when given the opportunity to ask the respondent's witnesses specifically about the allegations of race discrimination, she remained silent leaving a non legal member having to ask direct questions.
22. This application for reconsideration is refused for having no reasonable prospects of success.

**Failure to consider whistleblowing and obstruction of evidence**

23. The claimant's whistleblowing complaint has already been decided upon. The claimant has brought a prior complaint in this regard where Judgment has already been given. There was no relevance of the whistleblowing complaint to the complaints being brought as part of this claim.
24. The claimant agreed the list of issues at the outset of the hearing and indeed the Tribunal included the complaint of harassment albeit it had not expressly been identified at an earlier case management hearing.
25. The claimant did not raise any missing documents with the witnesses nor cross examine them about any documents which she now asserts were relevant but not available.
26. The claimant appears fixated on the issue of whether she could have ordered products. She does not appear to understand that the only relevant matter to make findings about insofar as it related to whether she had/was able to order products was her allegation that she was accused of theft by Mr Murdoch and that a customer shouted at her. The ordering of products was background information to

how she was treated unfairly. This specific incident was not referred to in her list of issues, but we still heard evidence about it and made findings about it.

27. If the claimant referred to any documents in the bundle in submissions or in cross examination the Tribunal considered it when arriving at their decision insofar as it was relevant to the complaints.
28. The claimant's 'to do list' and whether she could order products was irrelevant to her claim. She was not dismissed on capability or performance grounds.
29. We observed no action which obstructed the claimant's ability to present her case. Nothing was raised during the hearing by the claimant which we considered was preventing her from having a fair hearing. She knew of the complaints and issues. She had sufficient time to ask relevant questions of all witnesses.
30. This application for reconsideration is refused for having no reasonable prospects of success.

### **Failure to consider the claimants whistleblowing allegations**

31. The claimant repeats the same matters she has raised above. I refer to paragraphs 23 – 30 above. The claimant simply does not appear to understand what was relevant to the issues the Tribunal had to make findings of fact about. This was her case, and she cannot say she was not aware of the relevant issues. She is focusing on an irrelevant whistleblowing complaint (about which she did not cross examine any witnesses). She is focusing on her access to emails being revoked impacting her ability to defend the claim but is unable to show what precisely was missing that would have been relevant to the issues. She is focused again on the ordering of products which was not even an issue in the case albeit I repeat she was able to give evidence about it. She also cross-examined the respondent's witnesses and had the opportunity to put relevant questions to them about the product ordering if she considered it relevant to the issues.
32. This application for reconsideration is refused for having no reasonable prospects of success.

### **Inconsistent Treatment of Employees & Public Safety Concerns**

33. The Tribunal's decision deals with the relationship between the claimant and Mr Murdoch. The claimant was cross examined about the complaint made to the General Optical Council ('GOC') and the emails from them in the bundle support the respondent's position that no action was taken by them as regulator. They confirmed they act when an optical professional poses a risk to patient safety or when their conduct is likely to undermine public confidence in the profession and having considered the claimant's allegations, they concluded they would not be investigating her complaint any further. The Tribunal did not find the GOC's findings contradicted the Underhill investigation. To the contrary it supported the respondent's position.
34. Insofar as her being treated less favourably than others is concerned this is relevant to her complaint of race discrimination. We heard no evidence to persuade us of any less favourable treatment. Indeed, the claimant was informed multiple

times by me that this was her opportunity to put questions to Mr Murdoch about the allegations of less favourable treatment related to race yet she failed to do so. She was clearly aware of the allegations she had made yet failed to cross examine him about those allegations.

35. Similarly, there was nothing raised by her in cross examination pertaining to public safety concerns. In any event this again was not an allegation she makes as part of her claim and nor is it in the list of issues.
36. This application for reconsideration is refused for having no reasonable prospects of success.

### **Failure to properly assess my fear of violence and employers' duty of care**

37. We made findings about the claimant's assertion that she was afraid of Mr Murdoch. She intimated a physical threat, but her evidence was clear that Mr Murdoch at no time 'pushed' the claimant. She says she reported it to the police. She asserted it was still an open case but accepted they have not prosecuted Mr Murdoch. Her evidence about this was confusing. She continued to refer to it is a 'common assault' but when directly questioned she accepted he had not pushed her. What she refers to as an assault in her own evidence was him waving his hand. She accepted in evidence he did not touch her. Yet she reported this as an assault to the police. Her evidence was not credible about the fear of any violence.
38. We made findings of fact about her assertion that she was frightened of Mr Murdoch.
39. An employer's duty of care to protect the claimant from foreseeable risks under the Health and Safety at Work Act 1974 is not a cause of action the Employment Tribunal has jurisdiction to deal with. The claimant raises the Health and Safety at Work Act 1974. The claimant did not bring any complaint where health and safety matters were relevant.
40. This application for reconsideration is refused for having no reasonable prospects of success.

### **Breach of confidentiality – leaving the door open**

41. Insofar as the claimant raised it as background information to any complaint this was addressed. It did not form part of the list of issues and was not relevant to the complaints. Breach of confidentiality is not a cause of action.
42. This application for reconsideration is refused for having no reasonable prospects of success.

**Tribunal's acceptance of redacted conversations and flawed investigation**

43. The Tribunal asked questions of the relevant witnesses about the redaction in the investigation documents and were satisfied with the responses given. There was sufficient unredacted content for the Tribunal to make appropriate relevant findings.
44. The claimant also had the opportunity to ask questions and make submissions about any redaction and any aspect of the investigation which she was alleging was flawed. She also gave her own evidence about the investigation and was not able to give any cogent evidence as to why the accounts of those interviewed could not be relied on. The decision clearly refers to this.
45. It was clear the redactions largely related to anything which could identify the person being interviewed as part of the investigation.
46. This application for reconsideration is refused for having no reasonable prospects of success.

**Failure to consider my request for reinstatement**

47. The claimant's request here is misconceived. The Tribunal found she was not unfairly dismissed. In those circumstances reinstatement is not relevant.
48. She refers to constructive dismissal which again is misconceived. The claimant did not terminate her employment. She was dismissed. This was not in issue. There was no complaint of constructive dismissal.
49. This application for reconsideration is refused for having no reasonable prospects of success.

**Failure to consider my health condition**

50. The claimant does not articulate how this is relevant to the issues in her case. In any event we have already considered her evidence about the events of 9 September 2022 and found her evidence to be confused and unclear. This is recorded in the written reasons provided. We have made our findings about her allegations about 9 September 2022. Her application provides no new information or evidence which she did not have the opportunity to provide in her own evidence and/or to cross examine the respondent's witnesses about at the final hearing.
51. This application for reconsideration is refused for having no reasonable prospects of success.

**Failure to consider racial discrimination**

52. The claimant argues we accepted Mr Murdoch's evidence without proper scrutiny. This is incorrect. The claimant avoided asking Mr Murdoch direct questions about the allegation of race discrimination despite being given repeated opportunity to do so. She was also unclear and confused in her own evidence about the allegations. We have already dealt with this in the written reasons provided.

53. The claimant raises nothing new which has already not been considered by the Tribunal.
54. This application for reconsideration is refused for having no reasonable prospects of success.

**Material Findings requiring reconsideration**

55. The claimant has misunderstood the Tribunal's findings in relation to her allegations of being suppressed. The Tribunal did not accept this.
56. The claimant is making additional assertions within this request which did not form part of her claim and/or her cross examination including the issue of lack of ventilation in the room. Erroneous prescriptions also did not form part of the issues in her claim. Notwithstanding this she had the opportunity to cross examine Mr Murdoch about these matters if she considered they were relevant. It is not for the Tribunal to cross examine any parties' witnesses.
57. The claimant also asserts procedural unfairness because the final hearing was changed from an in person hearing to a video hearing. Nothing was raised by the claimant at all about this during the hearing. The hearing was dealt with in the same way it would have been had it been in person. There is no unfairness she has identified in the procedure which arose specifically from the hearing being conducted by video.
58. The continued reference to the whistleblowing complaints again demonstrates Mrs Habib's lack of understanding of what the relevant issues in this case were. The fact she followed internal procedures for the whistleblowing complaint is irrelevant to the issues in this case. I repeat the whistleblowing complaints were dealt with under a separate earlier claim the claimant brought which had already been determined before this case.
59. The remaining matters raised under this final sub paragraph by the claimant have already been addressed in detail above in this Judgment as the claimant has repeated a number of the same matters under different headings.
60. Insofar as they have not been individually addressed elsewhere, I note they seek to simply re litigate the same matters (some of which were not relevant to the issues in the case) which the claimant has already had the opportunity to do at the final hearing. The Tribunal has made findings of fact in relation to the relevant issues and has given reasons for these findings.
61. This application for reconsideration is refused for having no reasonable prospects of success.

**Procedural Unfairness – Breach of Article 6 ECHR and Rule 2 of the ET Rules 2013.**

62. The ET Rules 2013 have been superseded by the ET Rules of Procedure 2024. The relevant rule is therefore Rule 3.



63. The claimant is unclear about when the respondent's counsel is alleged to have had access to 'what's app' as there is reference to a preliminary hearing. I was not the Judge at any preliminary hearing of this case. In any event I am satisfied respondent's counsel acted with professional integrity throughout the final hearing. They will only have used their mobile device if they were asked to or needed to take instructions. There was nothing unusual about this. Counsel has professional conduct rules to abide by and their duty is to the Tribunal. The claimant received a fair trial and was only interrupted because she tended to veer off the relevant issues and, in some cases, avoided asking questions in relation to the issues which were clearly relevant. The claimant's ability to effectively present her case was impacted by the fact she was focused on issues which were not relevant for much of the time. As a litigant in person, she was given considerable leeway in this regard, but the Tribunal has to balance both parties' rights to a fair hearing and it is clearly critical that evidence must be heard about the relevant issues and be concluded within the time allocated for the hearing.

64. This application for reconsideration is refused for having no reasonable prospects of success.

#### **Internal conflict of interest**

65. The claimant again is simply disagreeing with the Tribunal's findings about the unfair dismissal complaint. There is no new evidence presented which alters the findings. The claimant is informing the Tribunal how they should have assessed the evidence. We have already assessed the evidence and made our findings about the same matters she raises.

66. This application for reconsideration is refused for having no reasonable prospects of success.

#### **Bullying and hostile environment**

67. The claimant was able to cross examine Mr Murdoch about matters relevant to the issues. She did not notably (as is referred to in the written reasons) put questions to him regarding the alleged racist remarks. She also did not establish that Mr Murdoch's behaviour was bullying, nor did she establish a hostile work environment insofar as it was relevant to the issues.

68. I repeat again the claimant is not adducing any new evidence. She is simply disputing the Tribunal's findings because she does not agree with them. The Tribunal considered the oral evidence of all witnesses including the claimant and the documents referred to in the bundle insofar as they were relevant to the issues.

69. This application for reconsideration is refused for having no reasonable prospects of success.

**Lack of procedural Integrity at preliminary hearing (November 2023)**

70. Insofar as any request for reconsideration relates to any decision made at a preliminary hearing in 2023 the application is considerably out of time and rejected.
71. I was not the Judge at that hearing but the claimant's application for reconsideration is clearly out of time. The basis of the claimant's application here relates to the respondent's counsel not having knowledge of matters raised at that preliminary hearing. It is entirely unclear how that resulted in procedural unfairness as alleged. It is not unusual for counsel to need to take instructions.
72. This application for reconsideration is refused for having no reasonable prospects of success.

**Use of intimidation over evidence**

73. No issues were raised about suppressing evidence by the claimant at the final hearing. We have addressed the issue of redaction earlier in this Judgment. The Tribunal satisfied themselves with clarification questions about the nature and extent of the redaction. The claimant makes vague allegations about suppressing evidence with no clarity about what evidence is alleged to have been suppressed.
74. In any event I repeat the claimant had the opportunity to raise such matters in cross examination and when making submissions.
75. There is no evidence of intimidation tactics. I am not aware of what was said at any preliminary hearings referred to by the claimant. I repeat any request for a reconsideration of any decision made at earlier preliminary hearings is significantly out of time and rejected.
76. This application for reconsideration is refused for having no reasonable prospects of success.

**Dismissal not supported by Conduct Record**

77. The respondent was not relying on capability as the reason for dismissal. The claimant's conduct insofar as it was relevant to the dismissal being fair was considered.
78. The Tribunal has already provided reasons why the dismissal was unfair in the written reasons provided.
79. Insofar as the Tribunal permitted questions about the claimant's son's conduct this was relevant to the reason for dismissal and therefore the questions posed were relevant and permitted.
80. Insofar as this conduct being referred to at any preliminary hearing, again any request for reconsideration relation to any preliminary hearing is significantly out of time and rejected.

81. Again, the claimant is simply opposing the Tribunal's findings. There is no new evidence provided to support her application. Her assertion the Tribunal 'failed to properly evaluate' is not supported by anything new. The Tribunal has already given full written reasons for our findings.

82. This application for reconsideration is refused for having no reasonable prospects of success.

### **Health related incident misrepresented**

83. The claimant had the opportunity to cross examine the respondent witnesses about the relevant issues including any documents she asserts were missing and relevant. She also gave her own evidence about her allegations. She is simply repeating matters she has already raised some of which are relevant to the issues and have already been referred to in the written reasons and others which are not relevant to the issues in this case. The Tribunal has explained its findings about the relevant issues. The claimant is repeatedly referring to matters she considers relevant but clearly were not to the claims as advanced by her.

84. She does not specify which of the the issues raises anything about the relevance of the contract.

85. The claimant makes broad general assertions without being able to clearly identify which issues they are relevant to. There is no new evidence advanced in this application which could not have been put to the witnesses if relevant at the final hearing.

86. This application for reconsideration is refused for having no reasonable prospects of success.

### **Derogatory language and personal bias**

87. The claimant had ample opportunity to raise questions of Mr Murdoch in cross examination. She was specifically informed by me that this was her opportunity to establish that what she was saying happened happened, in particular in relation to alleged racist remarks. She notably avoided asking Mr Murdoch any questions about her own case in this regard. She was fixated on a number of irrelevant matters.

88. Despite it not being the Tribunal's role to cross examine witnesses the Tribunal did put questions to Mr Murdoch in relation to the relevant allegations. We have given our reasons as to our findings of fact.

89. If there were documents in the bundle the claimant could have put to Mr Murdoch in cross examination that was for her to do so. She had the chance to do so. It is not for the Tribunal to make a case for any party.

90. This application for reconsideration is refused for having no reasonable prospects of success.

**Hostility and micromanagement**

90. I repeat what is set out above at paragraph 87 – 89 above as these are all matters if relevant the claimant could have put to the witnesses in cross examination.

91. This application for reconsideration is refused for having no reasonable prospects of success.

**Aggressive behaviour pattern**

92. I repeat what is set out above at paragraph 87 – 89 above as these are all matters if relevant to the issues the claimant could have put to the witnesses in cross examination. The claimant is speaking in general terms without specifying any particular incidents. Her oral evidence was similarly vague and not cogent in respect of the specific allegations she made in this case.

93. This application for reconsideration is refused for having no reasonable prospects of success.

**Redacted and withheld evidence**

94. I refer to my reasons at paragraphs 43 – 45 above in relation to the redacted evidence and will not repeat what is set out there.

95. This application for reconsideration is refused for having no reasonable prospects of success.

***Decision on the reconsideration application***

96. In my Judgment, the claimant is now seeking to have a second bite of the cherry by repeatedly raising matters in relation to her claims which could have been raised during her evidence and /or her cross examination of the respondent's witnesses. In the alternative she raises matters which are not relevant to her claims nor the issues she agreed at the outset of the final hearing were correct.

97. Further it is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, especially where evidence being referred to has already been considered and deliberated on. It is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the respondent is able to make to the Employment Appeal Tribunal.

98. In view of the above determination of this application, the original judgment still stands.

99. The application is for reconsideration is refused.

**Case Number: 2304293/2022**

Employment Judge N Wilson  
Dated: 22 April 2025

Sent to the parties on  
Dated: 28 April 2025