EMPLOYMENT TRIBUNALS

Claimant: Ms S Jama

Respondent: Glenn Group

JUDGMENT

1. The claimant's application for reconsideration of the judgment, sent to the parties on **13 December 2024** is successful. The judgment striking out the claim is revoked.

2. The claim is now back in the same status that it was in on 29 August 2024 when the Tribunal wrote to parties.

3. A separate notice of hearing will be sent.

REASONS

1. Rules 68-70 of the Tribunal Rules provides as follows:

70. 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. The Tribunal has 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. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the 2013 revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Earlier versions of the rules had included specific examples of potential grounds for reconsideration; the omission of those specific examples did not mean that those things were

no longer possible routes to reconsideration; an application relying on any of those arguments can still be made in reliance on the "interests of justice" ground.

7. Previous appellate decisions (even under earlier versions of the Rules) can provide helpful guidance to a judge, but they are not intended as a checklist. The individual circumstances of the particular application have to be considered on their own merits.

8. 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.

9. 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.

10. Rule 21deal with applications for extension of time for presenting response. Where such an application is granted, then, because of Rule 21(5), any judgment that has been issued under Rule 22 must be set aside.

11. The Employment Appeal Tribunal's decision in Kwik Save Stores Ltd v Swain and ors 1997 ICR 49 sets out the correct test for granting an extension of time for a response under version of the rules which was then in force. Although the new rule is worded differently, the case remains relevant to the question of whether, having regard to the overriding objective, an application for an extension of time to submit a response should be granted.

12. In Kwik Save, the employer's responses (in respect of claims from different claimants) had been entered between 14 and 26 days late. The employer applied for extensions of time. It submitted that its failure to comply with the time limits had been due to an oversight. The tribunal judge found the employer's explanation to be unsatisfactory and refused to grant the extensions of time. The employer appealed to the EAT, arguing that the judge had exercised his discretion incorrectly. The EAT stated that the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and

justice. In particular, the EAT held that, when exercising a discretion in respect of the time limit, a judge should always consider at least the following factors, though other factors might also be relevant:

12.1. the employer's explanation as to why an extension of time is required;
12.2. the balance of prejudice;
12.3. the merits of the defence.

13. Commenting on these factors, the EAT's opinion was:
    13.1. the more serious the delay, the more important it is that the employer provide a satisfactory and honest explanation. A judge does not have to accept the explanation given. A judge is entitled to form a view as to the merits of the explanation.
    13.2. In relation to the balance of prejudice, it is necessary to consider whether the employer, if its request for an extension of time were to be refused, would suffer greater prejudice than the Claimant would suffer if the extension of time were to be granted.
    13.3. In relation to the merits of the defence, the Employment Appeal Tribunal suggested that if the employer's defence is shown to have some merit in it, justice will often favour the granting of an extension of time, or else the employer might be held liable for a wrong which it had not committed.

14. No matter how serious the failure of the Respondent, and no matter how inadequate its explanation, it is an error of law for a judge to fail to consider the other factors as well as part of the overall decision.

15. The analysis of the balance of prejudice is likely to be affected by whether a judgment has been issued and, if so, when. The fact that an extension of time, if granted, would have the effect of depriving the Claimant of a judgment is a relevant factor; judgments are intended to be final. However, it is not a decisive factor. In an appropriate case, an extension of time should still be granted, provided that proper weight has been given to the prejudice caused to the Claimant.

<u>The application</u>

16. On 17 December 2024, the Claimant made an application (submitted on her behalf by Hillingdon Law Centre) for reconsideration which was in time, and which complied with the procedural requirements.

17. There was further correspondence and there was a letter sent on my instructions on 25 February 2025. I note the Respondent's reply of 4 March 2025 and Hillingdon Law Centre's reply of 18 March 2025.

18. Each side is content for the decision to be made without a hearing.

19. I am not going to take account of what the Claimant's side say about alleged without prejudice discussions. Even if what they say is true, then (i) firstly it would not be admissible evidence and (ii) secondly, it would not be relevant. Settlement discussions are always encouraged, but they do not remove the obligation to comply with case management orders.

20. The notice of hearing and case management orders were sent originally by post to Hillingdon Law Centre. The Claimant does not appear to deny that they were forwarded to her by that method. She denies receipt of the email of 12 December 2024 which re-sent the notice of hearing to the Respondent (in response to a request from the Respondent) and which copied her in. the Claimant also denies receipt of the Tribunal's strike out warning sent on 24 October 2024. Both those emails appear to have been correctly addressed.

21. The Respondent then made postponement request on 12 December, not copied to the Claimant.

22. I am satisfied that the Claimant has not deliberately flouted the orders and that it is genuinely true that she cannot now find them in her email inbox. Whether the reason they are not there now is that they went to a junk folder and were auto-deleted, or that they were accidentally deleted by the Claimant, I cannot really say. On the face of it, they were correctly addressed by the Tribunal.

23. I take into account what is said on the Claimant's behalf about English not being her first language. I infer there was also some confusion on the Claimant's part about whether Hillingdon Law Centre was representing her or not.

24. Finality of judgments is important. However, in this case, as well as the Claimant not complying with the orders, neither did the Respondent. The Respondent also had similar (alleged) reasons, namely that the case management orders did not reach the right person.

25. Although there was an apparent lack of engagement with the Tribunal's orders previously, it seems that there is now willingness to make sure the orders are complied with.

26. There may be some fault on the Claimant's side; that can be decided in due course if there is any application for a preparation time order. However, balancing the effects on the Claimant of upholding the strike out decision against, on the other hand, the public interest in finality of judgments, and the inconvenience to the Respondent if I revoke the judgment, my decision is that I should revoke it.

27. I have given instructions to staff for a final hearing to be listed on the same basis that EJ Alliott originally ordered last August. Details will be sent to parties in a separate judgment.

Approved by: **Employment Judge Quill**

Date:25 April 2025

JUDGMENT SENT TO THE PARTIES ON

7 May 2025

FOR THE TRIBUNAL OFFICE