EMPLOYMENT TRIBUNALS

Claimant: Mr J Abdulla

Respondent: Royal Mail Group Ltd

JUDGMENT

The claimant's application dated **2 April and 3 April 2025** for reconsideration of the judgment, sent to the parties on **13 March 2025** (with written reasons sent **19 March 2025**) is refused as it has no reasonable prospects of success.

REASONS

1. Rules 68-70 of the Tribunal Rules provides 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. 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 2013 and 2024 versions 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.

The application

10. On 2 April 2025, the Claimant made an application for reconsideration which was in time, and which complied with the procedural requirements. It was an email with some image files attached, collectively they amounted to a 6 page letter / application.

11. The following day he sent an email which attached a 50 page pdf. That was an application with paragraphs numbered 1 to 8 (pages 1 to 3 of the pdf) then some further submissions (pages 4 to 9 of the pdf) then some other documents.

12. Dealing with the image files first, "Ground 1" is about time limits. There is no reasonable prospect of the decision being varied or revoked on the basis of this part of the application. Firstly, the Tribunal believed that it was applying the correct tests and taking into account the correct factors, and any argument that it did not do so should be pursued by way of appeal rather than reconsideration application. Secondly, the claims failed on their merits as well as on time limits.

13. Ground 2 asserts that the unfair dismissal decision was incorrect. It refers to the defects which the Tribunal found in the Respondent's procedure. However, the oral and written reasons already explained why those defects did not mean that the dismissal as a whole was unfair. The Claimant argues that the Tribunal applied Taylor v OCS group incorrectly; that is an argument that should be pursued by way of appeal rather than reconsideration.

14. Dealing next with the pdf, at paragraph 2 on page 2, it is asserted that there was "Procedural Irregularity: Failure to Assist a Litigant in Person". There is reference to Drysdale v Department of Transport and to three bullet points. These are 3 generalised assertions; no specific details of what the Tribunal could or should have done differently are provided.

15. At paragraph 3 on page 3, it is asserted that the dismissal was unfair. The Tribunal made findings of fact and applied the law to the facts, and decided that the dismissal was not unfair.

16. At paragraph 4, it is asserted that the Tribunal erred by failing to extend time. I have addressed this above in relation to "Ground 1".

17. Paragraph 5 is an argument that is wholly inconsistent with the case presented to the Tribunal. In the hearing, the Claimant denied that the alleged misconduct had taken place (and (i) suggested that he may have been framed, and (ii) that insufficient investigation was carried out into whether someone else amended the leave form). Our decision was that the Claimant had been given full opportunity to make submissions to the employer (see paragraphs 332 to 339, in particular, of the written reasons).

18. Paragraph 6 argues that the Tribunal misinterpreted and/or misapplied section 26 and/or 136 the Equality Act 2010. The Tribunal's decision, on the facts, was that the alleged word was not used, and the Tribunal gave reasons for that decision.

19. Paragraph 7 asserts that the Tribunal failed to take full account of all the circumstances when deciding whether the dismissal decision and (in particular) the procedure followed by the Respondent were "fair" or "unfair". The judgment and reasons explained the approach which the Tribunal took.

20. On page 4, under the heading "1.1 Disability Discrimination", there are further comments from the Claimant. There is an assertion that the Tribunal failed to consider whether the Respondent's treatment of the Claimant arose in consequence of the Claimant's disability. That is not an accurate summary of the definition of discrimination contained in section 15 EQA. However, and in any event, the Tribunal addressed the complaints that were presented to it, as explained in the written reasons.

21. In the same paragraph, the Claimant comments on what he says were failure to make reasonable adjustments by the Respondent. The Tribunal explained, in the written reasons, what reasonable adjustments complaint it was addressing, and why it failed.

22. Under the heading "1.2 procedural unfairness", the Claimant states there was

a letter from CWU dated 17 August 2021, which states that he contacted the harassment helpline on 16 August 2021.

22.1. To the extent that he means the (extract from the) email that (on the face of it) he sent to himself on 16 August 2021, we commented on that document in the reasons (and said why we were not taking it into account).

22.2. To the extent that the Claimant actually means the letter of 12 July 2022, which states that he called the harassment line on 11 July 2022, that would have been a relevant document. If the Claimant failed to disclose it to the Respondent, he was wrong. If the Claimant did disclose it, and the Respondent failed to add it to the bundle, they were wrong. However, the contents are entirely consistent with the findings of fact which we made, and there is no prospect that any of our decisions would have been different if we had seen this document during the hearing.

23. The next heading in the document is "1.3 Unjust Application of Time Limits for Reasonable Adjustments Claim". This is simply an attempt to re-argue the decision which the Tribunal already made. There is no reasonable prospect that the contents of this paragraph would cause the Tribunal to change its mind.

24. The next heading is "1.4 Failure to Properly Consider Harassment Claim".

24.1. The Claimant comments on the evidence before the Tribunal, and asserts that the Tribunal made the wrong findings of fact. The Tribunal considered the evidence very carefully, and explained its reasons. There is no reasonable prospect that the comments on the evidence we had already seen would cause the Tribunal to change its the findings of fact.

24.2. To some extent, the Claimant appears to argue that we should have decided the purpose or affect of the Alleged Words, even if we decided that they did not occur. We did not think it was necessary to do that.

24.3. To the extent that the Claimant is suggesting that we should have considered whether the 8 July incident was harassment related to race, even if the Alleged Words were not used, we did this. See paragraphs 312 to 314 of the reasons.

25. In this section, the Claimant also refers to an email to himself dated 12 July 2022. This is page 11 of the pdf. The extract supplied (which seems incomplete) does not include the Alleged Words, and adds nothing to the evidence that was already before the Tribunal, and which the Tribunal already considered. (See paragraph 91 of the reasons, in particular, and the discussion in paragraphs 88 to 90).

26. The document on page 49 of the pdf did include the Alleged Words. The Claimant's application makes no comment on why he did not supply a copy

of this document to the Tribunal during the hearing. I will assume, for the purposes of considering whether the application has no prospects of success, that this is one of the documents which the Claimant told the Tribunal that were in his possession, but not immediately accessible, due to computer problems. The application does not specify whether the Claimant asserts that he did, or did not, disclose a copy of it to the Respondent prior to the hearing. In the application, he states:

> *The email detailing the specific racial slur and the threatening behavior of Mr Moore was sent to Rt Hon Keith Vaz of The Integration Foundation just a few days after the incident demonstrating the immediate and serious impact this harassment had on the Claimant and his proactive efforts to seek help*

27. The header information is not included in the pdf document. However, for the purposes of deciding prospects of success, I assume that the Claimant's explanation of the email's address is accurate.

28. There is no reasonable prospect that the fact that the Claimant has this evidence, which was not supplied to the Tribunal during the hearing, would cause the Tribunal to revoke its judgment, and re-open the evidence phase of the hearing.

    28.1. This new evidence does not contradict the Tribunal's analysis as set out in the written reasons, including that at paragraphs 118 and 119.

    28.2. Further, since it was an email sent by the Claimant, he has not provided a good enough reason that it was no presented during the hearing. The Tribunal gave the Claimant sufficient time and sufficient warning that he needed to supply us with any documents that he thought were missing from the bundle. In particular, after our pre-reading (and as mentioned in the written reasons), we drew the parties attention to the fact that, in the Claimant's meeting with Ms Hemmens, there was reference to a potentially relevant email which we did not have. The Claimant considered that, searched for anything that met the description, and gave the explanation mentioned in paragraph 87.

    28.3. On the assumption that the Claimant disclosed the item to the Respondent's representative before the hearing, the Respondent's representative – arguably, at least – ought to have included it in the bundle. However, the application does not assert that he did disclose it. the Claimant stated several times in the hearing that there were documents that he had disclosed to the Respondent which were not in the hearing bundle, and each time he was reminded that if he provided specific examples of that assertion, we would address them on a case-by-case basis. The Claimant has included (page 45 of the pdf) an index which potentially includes this item (or at least, it is not the case that there is no

reasonable prospect that the Tribunal would decide that this document is the one paginated “196” according to that index). However, he has not asserted that this is an index of documents created for this litigation, and either sent by his side to the Respondent's representative (or else by the Respondent's representative to his side).

29. The next heading was “1.5 Failure to Properly Consider Unfair Dismissal”. He refers to the Respondent’s conduct on 4 February 2023. That was not the date of the dismissal. The fact that the Claimant was told to go home on that date (and later suspended) was discussed in the written reasons.

30. For the reasons stated above, having considered the application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Approved by: **Employment Judge Quill**

Date: 8 April 2025

JUDGMENT SENT TO THE PARTIES ON

7 May 2025

FOR THE TRIBUNAL OFFICE