



EMPLOYMENT TRIBUNALS

Claimant: Mr Daryll Thomas

Respondent: Wren Kitchens Ltd

Heard at: Southampton

On: 27,28,29 November 2024

Before: Employment Judge Rayner
Ms K Symonds
Mr J Ruddick

Representation

Claimant: Mrs Thomas, Lay Representative and claimant's Wife

Respondent: Mr A Willoughby, Counsel

Decision of Reconsideration Application

The Claimants application for reconsideration of the Judgment dated 26 February 2025, is refused.

Reasons for refusal of application for reconsideration

1. The application for reconsideration is made under rules 68-71 of the Employment Tribunal Procedure Rules 2024, and was made within the time limit.

The Applicable Legal Principles

2. The process set out under rule 71 is for me, as the judge who chaired the full tribunal, to consider the application and determine, first of all, whether I consider that there is no reasonable prospect of the original decision being varied or revoked. If I am of that view, the application must be refused, otherwise the views of the other parties to the case must be sought.
3. Under rule 71, except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties.

4. For the reasons I will set out below I do not consider that there is any reasonable prospect of the original decision in this case being varied or revoked and, therefore, I refuse the application for reconsideration.
5. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated
“An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17, the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray & Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”
6. This means that a judgment will only be reconsidered where it is ‘necessary in the interests of justice to do so’.
7. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases ‘fairly and justly’ This 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.
8. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording ‘necessary in the interests of justice’ in what was then rule 70 of the Tribunal Rules 2013 (now rule 68) allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, ‘which means having regard not only to the interests of the party seeking the review or 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’.

Reasons for rejection of Application

9. In this case I consider that there is no reasonable prospects of the original decision being varied or revoked for the reasons I set out below.
10. The parties are reminded that the employment tribunal can only determine the issues which are properly before them. This means that in most cases, the issues which the tribunal will determine are those which have been set out and agreed in the case management order. If the parties do not agree the case management order when it is sent to them, they are given a time frame within which they can object to the issues as recorded.
11. In this case, the issues were discussed with the parties at the start of the hearing and reference was made to the case management order which had recorded issues for determination.
12. Further, the claimant is reminded that he specifically withdrew claims of sex and race discrimination at the case management hearing. The tribunal therefore had no jurisdiction to consider any such matters at the final hearing.
13. Therefore, there is no reasonable prospect. Of me reconsidering my judgment in respect of any allegation or suggestion of discrimination.
14. The claimant is critical of the process of the litigation and states that he and his representative were disadvantaged by the late-stage transition to video conference formatting. The claimant also suggests that the adversarial nature of the proceedings was a disadvantage to him.
15. It is recognised that litigants in person may find the tribunal procedure stressful and difficult, however, In this case, I am satisfied that the hearing was conducted fairly and, in particular, that I gave the Claimant, assisted by his wife and appearing effectively as a litigant in person with a lay representative, appropriate and sufficient support and assistance both in explaining the process of litigation, clarifying the issues and assisting in formulating and directing questioning throughout the course of the hearing. The fact that the Claimant found the process unfamiliar and challenging is regrettable but is not a basis for reconsideration of the judgment. I am satisfied that the hearing was conducted fairly and in accordance with the overriding objective.
16. The claimant suggests that an inability to confer with the clerk prior to the hearing caused them difficulties. I am satisfied that the procedure for the hearing by video, the need for breaks and the restrictions on recording, for example, were adequately explained to all parties at the start of the

hearing. I am satisfied that the hearing was conducted fairly and reject this as a basis for reconsideration.

17. The claimant has set out 46 paragraphs describing what he calls a pattern of retaliation following protected disclosures.
18. The matters identified at paragraphs 3-4 four were not part of the claimant's pleaded case. This was not before the tribunal for determination.
19. At paragraph 5, the claimant makes reference to the Equality Act 2010 and asks for consideration of whether or not there was indirect discrimination under Section 19 of the Equality Act 2010. This was not a matter before the Employment Tribunal. The claimant had specifically withdrawn any claims of sex discrimination.
20. Similarly, at paragraph 9-13, the claimant asks the Tribunal to consider the employer's conduct, and the application of their policies to those taking paternity leave, and whether or not there was discrimination linked to dismissal. These were not allegations before the Employment Tribunal and therefore have not been determined.
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21. Throughout his application, the claimant refers to findings of fact made by the Employment tribunal which he considers should be revisited or reconsidered. An example is the matters set out at paragraphs 15/16/17. The claimant does not suggest that any findings made were perverse, nor does he suggest that evidence was ignored and nor does he suggest that there is new evidence which has come to light since the hearing.
22. In those circumstances, since the factual matters have been determined following a full hearing at which parties gave evidence; were cross examined and documents were referred to, there is no basis for reconsideration. To do so would be to effectively give the claimant a second chance to argue his case on the same evidence, and that is not in the interests of justice.
23. At paragraph 19, the claimant suggests that the respondent has failed to comply with the legal provisions, but again, this is not a criticism or allegation made by the claimant which required a termination of these proceedings. The claimant's evidence and submissions were taken into account when making findings of fact and drawing conclusions. There is not a basis for reconsideration.
24. A paragraph 24, the Claimant seeks to clarify when the words *put up or shut up* were said. However, the judge made a factual determination based on the evidence and submissions of both parties. This is an argument that the judge should have made a different finding of fact. A

disagreement with factual conclusions is not grounds for the reconsideration of a judgment.

25. Paragraph 31 and subsequent paragraphs are essentially a criticism of the conclusions drawn by the claimant from the evidence before it. There is no basis for reconsideration set out within those paragraphs.
26. A number of the claimant's submissions seek to re argue the case, having received the judgment.
27. I remind myself and remind the parties that the purpose of reconsideration is to vary or correct a judgment only where it is in interests of justice to do so. It is not an opportunity for a party who is dissatisfied with the judgment to re argue their case.
28. This not a criticism of the claimant who is a litigant in person, but much of the claimant's reconsideration application amounts to further submissions and argument as to why the facts should have been decided differently, and different conclusions drawn from them.
29. Since these arguments could and should have been made during the hearing or at the point of making final submissions, these are not valid grounds for reconsideration of the judgment.
30. The claimant is reminded that reconsideration is different to an appeal.
31. I have carefully read the detailed arguments set out by the claimant in his application for a reconsideration. His arguments raised no new points of evidence, but rather a further attempt to argue his case or a request that matters not properly before the Tribunal, be considered in addition to those which were determined.
32. Whilst not unsympathetic to the difficulties a litigant in person can face in the litigation process, I remind myself of the need for finality in litigation, and that I only have power to determine the matters which are properly before me.
33. Taking all of these matters into account. I conclude that there is no reasonable prospect of me varying or reconsidering. My decision because it is not in the interest of justice to do so. I therefore dismiss the claimant's application for reconsideration.

Approved by
Employment Judge Rayner
Date: 19 May 2025

JUDGMENT SENT TO THE PARTIES ON
3 June 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>