EMPLOYMENT TRIBUNALS

Employment Tribunal: **Bristol**

Claimant: **Mr W Montgomery**

Respondent: **Stow Outdoors Ltd**

Before: **Employment Judge Cuthbert**

JUDGMENT ON RECONSODERATION

The judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Relevant law on reconsideration

1. Under **Rule 68** of the Employment Tribunal Procedure Rules 2024 ("the Rules") a Tribunal may reconsider a judgment where it is **necessary** in the **interests of justice** to do so. On reconsideration, the judgment may be confirmed, varied or revoked.

2. The "interests of justice" provide a Tribunal with a broad discretion to determine whether reconsideration is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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. It is unusual for a litigant to be given a "second bite at the cherry" and the jurisdiction to reconsider should be exercised by employment tribunals with **caution** (see ***Outasight VB Ltd v Brown*** UKEAT/0253/14 & ***Ebury Partners Ltd v Acton Davis*** [2023] EAT 40).

3. The procedure following a reconsideration application is for the Employment Judge who heard the case to review the application and determine if there are **any reasonable prospects** of the judgment being varied or revoked (**Rule 70(2)**). Reconsideration cannot be ordered simply because the applicant party disagrees with the judgment.

4. If the Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the Judge shall send a notice to the parties setting a time limit for any response to the application by the other party and seeking the views of the parties on whether the application can be determined without a hearing (**Rule 70**).

5. My role therefore, upon the considering the claimant's application based upon the papers initially, is to operate as a filter to determine whether there is a reasonable prospect of my decision being varied or revoked were the application to be further considered at a reconsideration hearing.

Process

6. I heard the claimant's case at an in-person preliminary hearing on 3 April 2025 and dismissed his unfair dismissal claim, by way of a reserved judgment and reasons dated 13 April 2025 and sent to the parties on 28 April 2025. The dismissal was on the basis that he lacked the necessary two years' continuous employment.

7. In between the end of the hearing (3 April) and the preparation of the judgment, the claimant wrote, on a number of occasions, to the Tribunal in respect of the hearing. I had not seen that correspondence at the point when the judgment was completed and sent to the parties. I have considered the correspondence as part of considering the present application for reconsideration.

8. The claimant wrote as follows to the Tribunal (in summary).

    a. 4 April 2025 – email and letter alleging that the respondent's witnesses gave false testimony and perjured themselves at the hearing. The claimant disputed the respondent's evidence that he worked shifts only in December 2021 and March 2022 and indicated that he worked shifts before, between and after December 2021 and March 2022.

    b. 7 April 2025 – email and letter requesting that the Tribunal preserve the recording and notes of the hearing as evidence of potential perjury. The letter also contained allegations against the respondent's solicitors and repeated allegations that the respondent's witnesses had given false testimony as to whether or not the claimant had worked other than in the months of December 2021 and March 2022.

    c. 10 April 2025 – letter concerning whether the claimant sought to pursue his remaining claim of breach of contract and if so on what basis (a response to these matters had been directed by the Tribunal). The claimant indicated amongst other things that he considered it prudent to retain **all** aspects of his claim in light of his allegations of perjury.

    (On 28 April 2025, the Tribunal sent out the reserved judgment and reasons to the parties)

d. 29 April 2025 – email and letter from the claimant seeking a "review" of the Tribunal's decision on the following basis:

i. His allegations of perjury against the respondent and its representatives had not been considered in the judgment and reasons.

ii. Evidence was submitted with his letters which contradicted the respondent's evidence about the dates when the claimant had worked.

iii. The interests of justice required a review to prevent a miscarriage of justice.

9. I have considered the claimant's application against the relevant legal framework above and against the judgment and reasons which he asks to be reconsidered.

Consideration of the claimant's application

10. I have considered the claimant's application with reference to what occurred at the previous hearing and the outcome of that hearing.

11. The claimant gave oral evidence at the hearing on 3 April 2025 and was cross examined by the respondent; the respondent's manager and a former director also gave oral evidence and the claimant cross-examined each of them. A large number of documents had been included by the parties in the hearing bundles, albeit that only a limited number were referenced during the evidence at the hearing. The hearing was conducted fairly and in accordance with Rules 3 and 41 of the Rules and the Overriding Objective.

12. My original decision was as follows, in summary.

13. The claimant lacked continuous employment with the respondent during the period in question between September 2021 and July 2022. It was very clear from the evidence that he worked for the respondent over that period on a very casual basis and so the working relationship lacked the essential requirement (for an employment contract to exist) of mutuality of obligation. The claimant's case fell well short of establishing continuous employment over the period above, meaning that when the working relationship was terminated by the respondent in late 2023, he did not have the necessary two years' continuous service to claim unfair dismissal. His claim for unfair dismissal was therefore dismissed.

14. Whilst I accepted the respondent's evidence as to the dates which the clamant worked for the reasons given in the earlier decision, I made it plain in the reasons that it would have made **no difference to the outcome** even had I accepted the claimant's case as to the dates worked – see para 56 of the decision (emphasis added):

> *56. The witness evidence **of both sides** showed that the working arrangement between the claimant and the respondent during the Relevant Period was **sporadic, casual, occasional and ad-hoc**. An*

> *infrequent enquiry was made by the respondent as to whether the claimant was available for work and, if he was, he could evidently choose whether to accept that work or decline it.* ***The claimant worked just 18 shifts for the respondent during the Relevant Period – it really made no difference at all whether those shifts were around one or two per month as the claimant claimed, or whether, as the respondent claimed, a number were clustered around December 2021 and March 2022, with fewer in between as a result. The end result, in terms of whether there was an employment contract in place during the Relevant Period, is the same.***

15. Later at para 61 of my original decision, I made clear again that even **on his own evidence**, the claimant's case on continuous employment would have failed (emphasis added):

> *61. I turn to the issue of the gaps in work in this case and section 212 ERA 1996. The claimant worked just 18 days in the Relevant Period. Had the claimant established employee status at all (which he has not), breaks in that employment of over one week would break continuity, subject to limited exemptions.* ***Even on his own case at its highest, there were multiple gaps in the work of more than one week during the Relevant Period.*** *These gaps did* ***not*** *amount to mere temporary cessations of work.* ***There was no evidence of any discussion or arrangement as to each cessation or as to when further work might be offered/accepted. It was entirely ad hoc.***

16. Given each of the findings above, it plainly made no difference as to whether the claimant worked a clump of dates in December 2021 and March 2022 or worked the 18 (or possibly 19) shifts during the relevant period on a more spread-out basis between September 2021 and the start of July 2022. The outcome would have been the same – an ad-hoc, casual relationship and no continuous employment - and as such the claimant's correspondence on 4, 7 and 10 April 2025 contesting the factual evidence of the respondent's witnesses would have made no difference to that outcome.

17. In terms of the claimant's application for reconsideration, I have concluded that it seeks, impermissibly, to re-open points of evidence which each side had the opportunity to argue at the original hearing. Achieving finality in litigation is part of a fair and just process. The claimant had the opportunity to have set out in his witness statement the dates on which he worked (but chose not to do so), he was cross-examined about these matters and was able to cross-examine the respondent's witnesses about such matters.
18. Crucially, as I concluded, the precise dates which were worked made no difference to the ad hoc, casual working relationship, the absence of mutuality of obligation, and the significant gaps between the occasions when the claimant worked (even on his own case). The outcome in either case was that he was not continuously employed for the necessary period.
19. It is therefore not necessary in the interests of justice to reconsider my decision. There is no reasonable prospect of the original judgment being

varied or revoked in the circumstances. So, the claimant's application for reconsideration is refused under Rule 70(2).

Employment Judge Cuthbert

Date: 20 May 2025

JUDGMENT SENT TO THE PARTIES ON 03 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE