



# EMPLOYMENT TRIBUNALS

**Considered at:** London South

**On:** 3 June 2025

**By:** Employment Judge Ramsden

**In the matter of Mr A Musaku v DHL Services Limited**

**Consideration of judgment reached on:** 28 March 2025

## JUDGMENT ON RECONSIDERATION

1. The Claimant's application for reconsideration of the judgment dismissing his claim given in this matter on **28 March 2025** is refused, and the decision in that judgment is confirmed. The Tribunal finds that the Claimant has no reasonable prospect of the judgment reached on 28 March 2025 being varied or revoked.

## BACKGROUND

2. The Claimant's Claim Form was filed on 18 July 2023. The Claimant claimed that:
  - a) He was unfairly dismissed;
  - b) He had suffered direct disability discrimination;
  - c) He had suffered discrimination arising from disability; and
  - d) The Respondent had failed to comply with a duty on it to make reasonable adjustments in respect of his disability.
3. The Respondent resisted these complaints.
4. The matter came before me for final hearing on 12 to 14 February 2025. I reserved judgment, and a reasoned judgment was produced by me on 28 March 2025 and sent by the Tribunal to the parties on 1 April 2025. Each of the Claimant's complaints was unsuccessful.

# APPLICATION

5. The Claimant applied, under Rule 69 of the Employment Tribunal Procedure Rules 2024 (the **ET Rules**), for reconsideration of my decision on 28 March 2025 to dismiss his complaints.
6. The Claimant's reasons for applying for reconsideration of that decision are set out in an 18-page application, but in summary are that:
  - a) The Tribunal's findings on the Respondent's reasons for dismissing him were incorrect;
  - b) The person who took the decision to dismiss him, Mark Stevens, did not explore all the options for dealing with the apparent difficulties in the professional relationship between the Claimant and a work colleague, Mrs Motycznska;
  - c) The decision not to allow the Claimant to return to work on the late shift was taken by John Clarke, and Mr Stevens, when taking the decision to dismiss the Claimant, did not consider whether Mr Clarke's decision was appropriate;
  - d) The decision not to allow the Claimant to return to work on the late shift was an unreasonable one in light of:
    - (i) The evidence presented by the Claimant that he and Mrs Motycznska in fact had a good relationship, and that Mrs Motycznska did not in fact feel humiliated by the Claimant, as the Respondent claimed;
    - (ii) The argument made by the Claimant that another of the Claimant's colleagues, Richard Parkes, two managerial levels higher than the Claimant, had a grudge against the Claimant and pressured Mrs Motycznska to make a complaint against the Claimant; and
    - (iii) The fact that both the Claimant and Mrs Motycznska had made complaints about each other, and it was unfair that the Respondent took the decision that the Claimant could not return to work on the late shift when no consideration was given to Mrs Motycznska being required to change shifts;
  - e) The Appeal Manager, Michael Ansell, failed to consider why Mrs Motycznska was saying that she felt humiliated by the Claimant and could not work with him again when the Claimant presented evidence to Mr Ansell that his friendship with Mrs Motycznska had recovered after the incident to which Mrs Motycznska's initial complaint related;
  - f) The Claimant declined to be considered for an alternative role at the Respondent's Dartford site for good reasons, including that he was not

offered that role and would have to apply for it, and that there were changes being proposed for that site which resulted in it no longer being a site within the Respondent's organisation;

- g) Mr Stevens and Mr Ansell lied to the Tribunal in relation to arrangements for management shifts;
- h) While Mr Ansell did arrange for mediation between the Claimant and Mrs Motycznska, that mediation was designed to improve the Respondent's case before the Tribunal. It was not a genuine attempt at mediation, as the mediator was person against whom the Claimant had previously raised a grievance;
- i) The Tribunal's conclusion as to why the Claimant was unable to work the day shift (the Tribunal found it was because of his caring responsibilities for his son) was incorrect; and
- j) The evidence relied on by the Respondent from Mrs Motycznska was not true.

## RULES

- 7. The Rules on reconsideration are set out in Rules 68 to 71 of the ET Rules.
- 8. Rule 68 sets out the principles that apply to reconsideration of a judgment:

### ***“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 on 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.”*

- 9. Rule 69 sets out the conditions on which a party may make an application for reconsideration:

### ***“Application***

*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.”*

10. Rule 70 deals with the process the tribunal must follow regarding an application made under Rule 69:

**“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... 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...”.*

## REASONS

- 11. Of the grounds for reconsideration raised by the Claimant, a) to e) were matters considered and determined by the Tribunal as part of the judgment. The Claimant has offered no new evidence or reasons for those decisions being revisited.
- 12. The same is true for the first part of f), that the Claimant says he had a good reason for declining the Respondent’s offer to consider for him a position at its Dartford site, given that he would have had to apply for it. That point was made by the Claimant in the hearing, and so does not provide any basis for reconsideration.
- 13. As for the second part of f) - that the Claimant had good reason for declining the Respondent’s offer to consider for him a position at its Dartford site, given that there were changes proposed for that site which resulted in it no longer being a site within the Respondent’s organisation - the Claimant did not raise that at the hearing, but that argument has no reasonable prospect of prompting the Tribunal to vary or revoke its decision. The success of the Claimant’s complaints did not depend on the reasonableness or otherwise of the Claimant’s reasons for not applying for relocation to the Respondent’s then-site in Dartford – the relevant factual background was that any vacancy in Dartford was not one considered to be suitable for him by the Claimant, and that contributed to Mr Stevens’ decision to dismiss the Claimant.
- 14. In relation to g), the Claimant has made a bald statement that Mr Stevens and Mr Ansell lied to the Tribunal in relation to arrangements for management shifts. He

has offered no evidence for that assertion. Moreover, the Claimant disagreed with Mr Stevens' evidence on this point in the hearing and the Tribunal preferred Mr Stevens' evidence.

15. The Claimant did not make the assertion that he now does in ground h), that the mediation undertaken with Mrs Motycznska after Mr Ansell's success in persuading Mrs Motycznska to do so was a sham, in the hearing. The Tribunal heard no oral evidence, and saw no documentary evidence, that supports this contention the Claimant now makes. It has no reasonable prospect of causing the Tribunal to vary or revoke its judgment.
16. As for ground i), a significant reason why the Tribunal found the Claimant was unable to work the day shift due to his caring responsibilities for his son rather than his own disability was the Claimant's own evidence on this point. The Claimant admitted in his oral evidence that, despite his disability, he could alter his own body clock over time to adjust to a new shift pattern, but the thing that the Claimant said he could not alter was his responsibility to monitor his son while he was sleeping. When Counsel for the Respondent put to the Claimant that that did not relate to the Claimant's own disability but related to the disability of his child, the Claimant agreed.
17. The Claimant asserts (in ground j) listed above) that the evidence relied on by the Respondent from Mrs Motycznska was not true. Beyond pointing out the contradictions in the positions taken by Mrs Motycznska in relation to whether she could work with the Claimant again – a matter he repeatedly raised in the hearing – he provides no explanation for this assertion. There is no reason to revisit the conclusion the Tribunal reached on this point in the hearing.
18. In summary, the Claimant has no reasonable prospect of the judgment being varied or revoked on any of the bases made in his application.

# DECISION

19. For the reasons set out above, none of the bases for the Claimant's application provides any reasonable prospect of the judgment being varied or revoked, and the Tribunal's decision of 28 March 2025 in that judgment is confirmed.

Employment Judge Ramsden

Date: 3 June 2025

JUDGMENT ON RECONSIDERATION SENT TO THE  
PARTIES ON : 3 June 2025

O.Miranda

.