



EMPLOYMENT TRIBUNALS

Claimant: Anna Szymanek

Respondent: Kolak Snack Foods Limited

JUDGMENT

The claimant's application dated 5 February 2025 for reconsideration of the judgment sent to the parties on 30 January 2025 is refused.

REASONS

The law

1. Rule 68 of the Employment Tribunal Procedure Rules 2024 (the ET Rules) permits the tribunal to reconsider a judgement where it is necessary in the interests of justice to do so.
2. Rule 69 of the ET Rules states that, 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.
3. Rule 70 of the ET Rules states that:
 - “(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."
4. Caselaw decided under earlier versions of the ET Rules relating to the reconsideration of judgments is still relevant. In the case of *Liddington v 2Gether NHS Foundation Trust* [2016] UKEAT/0002/16/DA it was said that: "...a request for reconsideration is not an opportunity for a party to seek to re litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."
5. Rule 3 of the ET Rules states that:
- "(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes, so far as practicable—
- (a)ensuring that the parties are on an equal footing,
 - (b)dealing with cases in ways which are proportionate to the complexity and importance of the issues,
 - (c)avoiding unnecessary formality and seeking flexibility in the proceedings,
 - (d)avoiding delay, so far as compatible with proper consideration of the issues, and
 - (e)saving expense.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
- (a)exercises any power under these Rules, or
 - (b)interprets any rule or practice direction.
- (4) The parties and their representatives must—
- (a)assist the Tribunal to further the overriding objective, and
 - (b)co-operate generally with each other and with the Tribunal."

Procedure followed

6. The claimant's application was sent to me on 21 February 2025. I issued directions on 25 February 2025, seeking representations from the parties about the application and the need for a hearing.

7. On 27 March 2025, the respondent's representations (dated 28 February 2025) were forwarded to me from the tribunal office. An email from the claimant dated 2 March 2025 was also sent to me on that date.

Submissions

8. In summary, the claimant submitted that new evidence and arguments had come to her attention since the hearing which meant that the tribunal should reconsider its decision. The claimant said in her second email that crucial insights had been overlooked. The key points are as follows:
- i. The respondent only acknowledged the claimant's disability on the first day of the hearing;
 - ii. The respondent lost the claimant's medical file, did not take into account the Occupational Health report, did not allow access to further Occupational Health assessors, did not carry out a risk assessment, did not inform her line manager of her medical condition and did not make reasonable adjustments;
 - iii. A dispute about what was discussed during grievance meetings;
 - iv. The impact of the claimant's medical condition on her ability to discuss her needs at work;
 - v. The failure to grant her request for a change of line manager.
9. The respondent submitted that there was no lawful basis for the tribunal to reconsider its decision. This was because no new evidence or arguments had been identified by the claimant. The respondent noted that the hearing had taken 5 days during which the claimant had been represented and was able to fully argue her case. The tribunal had spent 2 days deliberating and should not allow the claimant to have a "second bite at the cherry." The respondent objected to a hearing and said that the application could be dealt with on the papers in order to save expense.

Conclusions

10. Having had regard to the written representations of both parties, I find that it is not in the interests of justice for there to be a hearing to determine this application. In reaching this decision, I have taken into account the overriding objective of the ET Rules. In particular, any decision must be proportionate to the complexity and importance of the issues. The claimant's application is, essentially, a request for a rehearing of the facts that have already been considered by the tribunal. In addition, a hearing would increase expense to the respondent and the justice system. The parties are on an equal footing because both have been able to submit their views in writing.
11. It is not in the interests of justice to reconsider the judgment in this case. The tribunal fully considered the evidence presented to it. The claimant was legally represented and was able to challenge the respondent's evidence during the hearing. The claimant has not set out any new evidence in her application, instead her application is a request for the tribunal to reach a different conclusion on the evidence and submissions that the tribunal has already considered in detail. The matters raised by the claimant in her application relate to the evidence heard during the hearing and were considered by the tribunal. No administrative error or event after the hearing has occurred. There needs to be finality to litigation and reconsideration applications are not meant to enable the same evidence to be reheard.

Date: 13 June 2025

Approved by

Employment Judge Freshwater

JUDGMENT SENT TO THE PARTIES ON

16 June 2025

FOR THE TRIBUNAL OFFICE