



EMPLOYMENT TRIBUNALS

Claimant:
Nesrin Habib

v

Respondent:
Leightons Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 68 of the Employment Tribunals Rules of Procedure 2024 (“**Rules**”), the claimant’s application of 7 May 2025 for reconsideration of the judgment given orally on 5 March 2025 and written reasons dated 2 April 2025 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant did not succeed in her complaints of **unfair dismissal, direct race discrimination, and harassment related to race.**

Principles of Reconsideration

2. When approaching any application, and during the course of proceedings, the Tribunal must give effect to the overriding objective found at Rule 3 Employment Tribunals Rules of Procedure 2024. This says:

“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. 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.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

3. The power to confirm, vary or revoke a judgment is found at Rule 68. That provides that a Judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration albeit almost identical to the one sent in March 2025 by the claimant was made in 14 days of the written reasons having been sent to the parties.
4. By rule 68, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
5. Rule 70 (1) and (2) of the Rules provides:

"A Tribunal must consider any application made under rule 69. 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 shall be refused, and the Tribunal shall inform the parties of the refusal. ..."
6. Where an Employment Judge refuses an application following the application of Rule 70 (2), then it is not necessary to hear the application at a hearing.
7. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be guarded against (*Outasight VB Limited v Brown* [2014] UKEAT/0253/14).
8. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board* [1975] ICR936, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also

said it was unjust to give the loser in litigation a “*second bite of the cherry*” where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

9. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (Ladd v Marshall [1954] EWCA Civ 1):
 - 9.1. the evidence could not have been obtained with reasonable diligence for use at the trial;
 - 9.2. the evidence would probably have an important influence on the result of the case; and
 - 9.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

10. The claimant has repeated an almost identical request for reconsideration of the Judgment which she made on 7 March 2025, and which has already been responded to in my Reconsideration Judgment dated 22 April 2025
11. She has now raised similar if not identical requests for reconsideration in her application dated 7 May 2025. It is not understood why she has repeated her application. She may have done so because she has since her original request for reconsideration received my Written Reasons.
12. Insofar as any request for reconsideration has already been dealt with by my Judgment on the application for reconsideration dated 22 April 2025, I do not intend to repeat what I have stated in that Judgment save to say it is not accepted the claimant did not receive a fair hearing. She had ample opportunity to cross examine the respondent's witness and to present her case. It is notable as stated in my earlier Judgment she avoided asking crucial questions which were critical to her complaints and instead focused on irrelevant matters. She was only interrupted to bring her back to the issues in her case or where she was not responding to the question being asked of her.
13. Insofar as the claimant stating she has been refused written reasons, I have never refused to provide them. If there was any delay it will have been due to other judicial function and/or periods of leave. Oral Judgment was handed down on 5 March 2025 and the written reasons are dated 2 April 2025. I cannot comment on any delay which then occurred in sending them out to the parties. The Judgment on the request for a reconsideration is dated 22 April 2025.
14. This second request for written reasons dated 7 May 2025 has been delayed in being responded to as it was confused with having already been dealt with given the claimant has already made an almost identical request for reconsideration which has already been responded to. Further the Judge's dad died in May 2025 and she has been on a period of leave hence the delay in providing this Judgment.

15. Much of what is stated in this second application for reconsideration has either already been addressed in my Judgment dated 22 April 2025 and/or it is an attempt by the claimant to put her evidence again/disagree with the findings of fact which have been made. I have already explained why we found for the respondent in the oral judgment and the written reasons provided. Reconsideration is not an opportunity to tell the Tribunal why the claimant's version of events should have been preferred to the respondent's. The relevant oral evidence heard, and any relevant evidence referred to in the bundle has been considered fully and our findings of fact provided.
16. In relation to any 'Supplementary' grounds for reconsideration referred to in this second application, it is denied the claimant was unable to properly present her case. She was only interrupted where she failed to answer the question being asked and/or she was straying away from the relevant issues in the case.
17. It is notable even in the application for reconsideration she remains focused on whistleblowing when this was not a complaint she was pursuing in this claim.
18. I have no record of anything being sent to the Tribunal by the respondent's counsel which the claimant would not have been copied into. I do not give my own email address out to parties. The parties will have been given my clerk's address who will forward documents to me. It is not unusual for a Judge to request or for parties to ask to send documents in during the course of a hearing. They will know and are told to copy in each other when they do so. I observed no inappropriate use of the phone by respondent's counsel.

Decision on the reconsideration application

19. In my Judgment, the claimant is now seeking to have a third bite of the cherry by repeatedly raising matters in relation to her claims again which could have been raised during her evidence and /or her cross examination of the respondent's witnesses. In the alternative she raises matters which are not relevant to her claims nor the issues she agreed at the outset of the final hearing were correct.
20. Further it is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, especially where evidence being referred to has already been considered and deliberated on. It is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the respondent is able to make to the Employment Appeal Tribunal.
21. In view of the above determination of this application, the original judgment still stands.
22. The application is for reconsideration is refused.

Case Number: 2304293/2022

Employment Judge N Wilson
Dated: 11th June 2025

Sent to the parties on
Date: 4th July 2025

For the Tribunal Office