EMPLOYMENT TRIBUNALS

Claimant: **Miss Diana Audit**

Respondent: **Tesco Stores Limited**

Heard at: **East London Hearing Centre**

On: **03 July 2025 (In Chambers)**

Before: **Employment Judge B Beyzade**

Representation
Claimant: Per the claimant's written application
Respondent:

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is that:

1.1. Having considered the claimant's application for reconsideration of the Tribunal's Judgment dated 31 January 2025, and sent to parties on 20 February 2025, in terms that "*The claim is struck out*" ("the Original Judgment") the Tribunal, after private deliberation, at the Reconsideration Hearing held in chambers on 03 July 2025, decided that the claimant's application dated 05 March 2025 for reconsideration of the Judgment sent to the parties on 20 February 2025 is refused. There is no reasonable prospect of the Original Judgment being varied or revoked.

1.2. The Tribunal, on reconsideration, has confirmed the Original Judgment sent to the parties on 20 February 2025, without variation, and amplified its reasons, as set forth in the following Reasons for this Reconsideration Judgment, to address the points arising from the claimant's application.

REASONS

Introduction

1. This case called before the Tribunal on 03 July 2025, for an in chambers Reconsideration Hearing, with the Employment Judge sitting alone in chambers (in private). This was appropriate having taken account of the matters contained in the Senior President's Practice Direction on Panel Composition ("the Practice Direction") along with the Presidential Guidance on Panel Composition which came into effect on 29 October 2024. It is noted in this regard that the Practice Direction provides, "6. In respect of any other matter an Employment Tribunal is to consist of a judge. This includes consideration of whether a party's application for reconsideration discloses a reasonable prospect of a judgment being varied or revoked." The Presidential Guidance indicates at paragraph 16 that post-hearing matters in respect of a reconsideration application (including when deciding whether or not such an application discloses a reasonable prospect of a judgment being varied or revoked under Rule 72 of the ET Rules 2013) will always be decided by an Employment Judge sitting alone. In addition, I am satisfied that this decision in respect of panel composition furthers the interests of justice and accords with the Tribunal's overriding objective.

2. The claimant made an application dated 05 March 2025 for reconsideration. At the date the application was made, the rules for reconsideration were set out at Rules 68 to 70 of the Employment Tribunal Procedure Rules 2024 ("the ET Rules 2024").

3. The Employment Judge considered the claimant's application under Rule 70 of the ET Rules 2024 [the legal test under Rule 70(2) of the ET Rules 2024 is in the same terms as Rule 72(1) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013]. The Employment Judge decided that there is no reasonable prospect of the Original Judgment being varied or revoked because of the reasons set forth below.
4. The reconsideration application arose out of the Tribunal's Judgment on 31 January 2025 (issued to parties on 20 February 2025) ["the Original Judgment"] that:

   "1. Pursuant to paragraphs 1 and 2 of the Employment Judge's Case Management Orders dated 10 December 2024 the Tribunal gave the claimant an opportunity to make representations or to request a hearing, as to why the claim should not be struck out because:

   • it has not been actively pursued.

   2. The claimant has failed to make representations in writing, or has failed to make any sufficient representations, why this should not be done or to request a hearing. The claim is therefore struck out."

5. On 24 June 2025 the Employment Judge directed the Clerk to the Tribunal to issue an apology to parties for the delay and to advise that parties can expect to hear further from the Tribunal by the end of July 2025. Regretfully, on checking the

Tribunal's file during today's in chambers hearing, the Employment Judge noted that the Clerk to the Tribunal, had not yet issued the said correspondence to the parties. The Employment Judge apologises that correspondence was not sent to parties prior to today acknowledging receipt of the application and providing an update.

6. 03 July 2025 was the earliest convenient date for the Tribunal to consider the claimant's application, on account of other commitments, including annual leave, the date of receipt of the claimant's application, training, judicial sittings diary, judicial sittings out of region and other judicial commitments.

The Tribunal's Original Judgment

7. The claimant presented their claim of unfair dismissal and sex discrimination to the Tribunal on 21 July 2024. By a Response dated 17 September 2024, the respondent resisted the claimant's claim in its entirety.

8. By way of a Notice of Hearing issued to parties dated 18 August 2024, parties were notified that a Preliminary Hearing for Case Management was listed to take place by video hearing on 05 December 2024 at 2.00pm.

9. Parties were sent the Tribunal's directions dated 03 October 2024 in relation to preparation of a list of issues, the claimant's Schedule of Loss and a Preliminary Hearing Bundle.

10. By letters dated 31 October 2024 and 05 November 2024 parties were notified that Employment Judge Gordon Walker directed that the Preliminary Hearing on 05 December 2024 by CVP will be extended to 3 hours. By a letter dated 04 December 2024 parties were advised that the Preliminary Hearing start time had been changed to 10.00am.

11. By email dated 25 November 2024 the respondent's representative sent to the Tribunal copied to the claimant, a copy of the Preliminary Hearing Bundle in electronic form. The respondent's representative further stated in that email:

> "*We provided the draft list of issues to the Claimant on 15 October 2024 and requested that she make any amendments to the draft list and send a copy to us within 14 days in accordance with the Tribunal's orders. The Claimant was also ordered to provide us with a schedule of loss by 17 October 2024. Despite our emails to the Claimant dated 15 October, 18 October, 1 November and 22 November, we have not received any response from the Claimant to date*."

12. The case called before me for a Preliminary Hearing for Case Management purposes on 05 December 2024. The claimant did not attend the hearing and was not represented at the hearing. I noted that the claimant had not sent their Schedule of Loss to the Tribunal and the respondent, nor prepared a revised list of issues or commented on the respondent's list of issues pursuant to the Tribunal's directions dated 03 October 2024.

13. Having checked the Tribunal file and enquired with the Clerk to the Tribunal, it was apparent that the claimant had not contacted the Tribunal to advise that she would

not be attending the Preliminary Hearing. On the Employment Judge's directions, the Clerk to the Tribunal contacted the claimant by telephone and email on the morning of the hearing to see if the claimant intended to join the hearing albeit late and to advise the claimant that if she did not attend the hearing by 10.20am, the hearing would proceed in her absence. The Hearing reconvened at 10.30am. The claimant was not present or represented at the Hearing and the claimant had not contacted the Tribunal.

14. For the reasons provided in the Tribunal's Case Management Orders issued to parties dated 10 December 2024, the Tribunal issued a strike out warning to the claimant in the following terms:

> "*Strike Out Warning*
> *Employment Tribunals Rules of Procedure 2013*
>
> *Rule 37*
>
> *1. On the respondent's representative's application and having considered the Tribunal file and any representations that have been made during today's hearing, the Employment Judge is considering striking out the claimant's claim because it has not been actively pursued.*
>
> *2. If the claimant wishes to object to this proposal, by not later than 4pm on 03 January 2025 the claimant must write to the Tribunal copied to the respondent's representative in order to give the claimant's reasons in writing or request a hearing at which the claimant can set out their objections and any reasons in respect thereof*."

15. The claimant was also directed to send their Schedule of Loss and any comments relating to the respondent's draft list of issues to the Tribunal copied to the respondent by not later than 4pm on 03 January 2025.

16. On 14 January 2025, the case file was referred to the Employment Judge who was advised by the Clerk to the Tribunal that no further correspondence had been received from the claimant. The Employment Judge reviewed the case file on 31 January 2025 and noted that no further correspondences or communications had been received by the Tribunal from the claimant. As a result, and for the reasons within the said Judgment, the Employment Judge prepared the Judgment and issued directions to the Clerk to the Tribunal to send the Original Judgment to the parties on 31 January 2025.

17. For present purposes, it will suffice to note here the specific terms of the Tribunal's Judgment only, issued in writing on 20 February 2025 ("the Original Judgment"), as follows:

> *"1. Pursuant to paragraphs 1 and 2 of the Employment Judge's Case Management Orders dated 10 December 2024 the Tribunal gave the claimant an opportunity to make representations or to request a hearing, as to why the claim should not be struck out because:*
> *• it has not been actively pursued.*

2. The claimant has failed to make representations in writing, or has failed to make any sufficient representations, why this should not be done or to request a hearing. The claim is therefore struck out."

Claimant's reconsideration application

18. On 05 March 2025, by way of an email sent that day to the Tribunal at 09:57PM, the claimant, applied to the Tribunal, for reconsideration of the Original Judgment that was issued in writing on 20 February 2025. The claimant's application was not copied to the respondent's representative.

19. The claimant's reconsideration application states as follows:

"*To whom it may concern,*
I'm Diana Audit.
I would like the Employment tribunal to reconsider the judgement made. I couldn't attend the hearing as I had family matters, which I had to fly out the country and returned on the 3rd of January, hence why I could not get back to the Tribunal by the 3rd of January. I can provide flight tickets as a proof. I would like to proceed with the appeal. If you kindly able to schedule a hearing for me to appeal the case."

20. The claimant thereafter proceeds to set out details relating to the claimant's claim. The claimant states:

"*I would like to make an appeal against the dismissal decision on the grounds of ; "You colluded between yourself and other colleagues to manipulate the reduction process"*

" You deliberately abused Tesco procedures by Reducing items not due to be reduced for purchase and personal gain".

The reasons of the dismissal are not explained in details. I was told by the both investigating managers and disciplinary manager the investigation has been sent by Head office this can be witnessed by my Rep Nazrul Islam. When I have asked in detail the origin of the investigation, I was told it came from a colleague complaint Prasad however his witness statement was retracted. I can confirm that I have witnessed also during my shift that the store manager Atanu was collecting and reviewing CCTV but at that time I did not know the matter but now I see that it was to frame me.

Point number 1, during the investigation there was no evidences nor statements were given to prove I was colluding between colleagues furthermore there were taken only two statements which it was not relevant to the case and one of them has been discarded by the investigation manager and later on when reviewed by the disciplinary manager had the same opinion. No explanation was given for not taking that statement into consideration. The second statement was not relevant to me and it only mentioned that sometimes the Gold CA discuss with me however that's not mentioned what we discuss and when it was discussed and also there was no confirmation given to me during the investigation nor disciplinary that the

Gold CA has discussed with me about any reduction process. The CCTV footage does not show any proof of collusion between myself and Julie as the investigating and disciplinary managers showed only 2 video footages without any audio and yet they concluded I was colluding with Julie. Also, I have not been provided any purchases history from till depicting every item bought, with date, time and CCTV footage to support it

Point number 2, the investigation was based on me damaging products and reducing it for my personal gain, however I was not given nor showed any evidences that I have deliberately damaged products. Also, the reduced items were shared to all the colleagues with the authorisation of the store manager as the witness statement have confirmed that he buys reduced items as well.

The decision was purely made from assumptions and not facts. I have reduced all items in front of the camera and the percentage amount as per the store manager instructions. In regards of the reduce items not to be sold to customers first I have mentioned in the investigation Tesco policy states that any damaged product must not be sold
to customers if it is not fit for sales due to packaging is split or punctuated and content has been espoused or a can product is dented and for this reason with the manager authorisation the store has a culture of buying these products instead of selling to customers for not increasing the waste. After having a look on Duty of care, relinquish
responsibility all reductions are reported next morning automatically from the system to the store manager; so, he is aware of the reduction and what needs to be reduced.

The disciplinary manager Leon and investigating manager Tady Oulare mentioned in Sarkar witnessed statement he discussed about my personal life and relationships with a previous employee where he accused me of manipulating the reduction process for my own gain however not proofs were provided to backup this statement. Sarkar was picked to give a statement because Atanu already knew I had issues with Sarkar and this can be confirmed by the staff and Arshad the rota manager.

I was also victimised and harassed were the investigating managers Tady Oulare was forcing and putting words in my mouth to admit as there was insufficient evidence from CCTV or witness statements. During the investigation it was noted that the witnesses statements were declined as no prove were implied to support the evidences against the allegation. Without any stronger evidence but only belief I was moved to disciplinary. I have never admitted the allegations put against me but I still was sent to disciplinary.

I feel like this investigation it's manipulated against me because I was one of the colleagues who made the complaint against Atanu due to his targeting and victimising behaviour towards me. Atanu was harassing me and he mentioned before the investigation started that I will be dismissed and some innocent colleague will be burn during this investigation. I was bullied by the store manager and called by names such as dumb and idiot hence why I have requested a transfer as soon as possible. An investigation was raised against the store manager against his behaviours however Tesco diffuse the case and the Store

manager Atanu took revenges for raising the complaint.

During the investigation I have noticed that CCTV footage was recorded prior the investigation started from October and my investigation started on the 14th of December which shows that it was pre planned to take his vengeance on me. I would like to note that all the reduction process were agreed by the Store manager Atanu and even if I was wrongly reducing items, I was never been told that I was doing wrong nor any let's talk was given instead I was investigated by another manager within the same group.

During the disciplinary meeting the manager Leon I felt he was a bit discriminating towards me and the USDAW rep Nazrul Islam by telling us to speak in English and not our own language even though we do not speak the same language. After we have told Leon that we do not speak the same language, Leon did not apologise.

I have requested during both investigation and disciplinary to have more CCTV footages and statements from other colleagues as the two witnesses' statement does not prove I'm guilty for my allegations and I feel like the witness Statements collected are bias because Sarkar and myself do not work in the same shift due to personal issues. I feel like I was not listened nor taken seriously as it seems it's not fairly investigated on my behalf and the Tesco code guidance: respect, dignity and fair treatment did not apply to me.

Throughout this whole process from being suspended on the 14th December 2023 (4 months), my mental health has suffered due to being treated as a thief with all mitigating evidence pointing otherwise. E.g. Lack of CCTV footage, lack of witnesses statements directly implying I was directly involved, lack of witness and lack of timeline to prove that I was guilty of a crime of gross misconduct, collusion with other members of staff, manipulation of reduction process, deliberately abuse Tesco procedures to me and other staff personal gain."

Issues for determination by this Tribunal

21. The only live issue for determination by the Tribunal at this Reconsideration Hearing was the claimant's application for reconsideration of the Original Judgment dated 31 January 2025 and issued on 20 February 2025, as per the claimant's application of 05 March 2025.

22. Accordingly, the case file was referred to the Employment Judge thereafter for further directions. The Employment Judge was provided with copies of all correspondences received from parties since 31 January 2025 (in addition to correspondences prior to 31 January 2025 which were accessible within the Tribunal's file including correspondences that were before the Tribunal at the Preliminary Hearing and had been forwarded to the Employment Judge thereafter).

23. The Employment Judge also reviewed all correspondences on the Tribunal file between the parties and the Tribunal up to and including today's date, 03 July 2025.

Relevant law: reconsideration

24. The ET Rules 2024 in relation to the reconsideration of judgments are at Rules 68 – 70. Those provisions are as follows:

> *"Principles*
>
> *68.—(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 under 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.*
>
> *Application for reconsideration*
>
> *69. 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.*
> *Process for reconsideration*
>
> *70.—(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."

25. When considering such an issue regard must also be had to the Tribunal's overriding objective in Rule 3 of the ET Rules 2024 (previously Rule 2 under the ET Rules 2013). The Tribunal's "overriding objective" under Rule 3 is to deal with the case fairly and justly. The precise terms of Rule 3 of the ET Rules 2024, are as follows:

"3.—(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."

26. A reconsideration application requires to be dealt with as per Rules 68 to 70 of the ET Rules 2024. I have set out its full terms above for ease of reference. As this was an application for reconsideration by the claimant, Rule 71, relating to reconsiderations by the Tribunal on its own initiative, does not fall to be considered further. Further, as always, there is the Tribunal's overriding objective, under Rule 3, to deal with the case fairly and justly.

27. The previous Employment Tribunal Rules 2004 provided a number of grounds on which a judgment could be reviewed (now called a reconsideration). The only ground in the ET Rules 2024 is that the judgment can be reconsidered where it is necessary "*in the interests of justice*" to do so. That means justice to all parties.

28. However, it was confirmed by Her Honour Judge Eady QC (as she then was, now Mrs Justice Eady, the current EAT President) in *Outasight VB Limited v Brown [2014] UKEAT/0253/14/LA*, reported at [2015] ICR D11, that the guidance given by the EAT in respect the previous Rules is still relevant guidance in respect of the ET Rules 2013 (the legal test under Rule 70(2) of the ET Rules 2024 remains unchanged) and,

therefore, I have considered the case law arising out of the 2004 Rules.

29. The approach to be taken to applications for reconsideration was also set out more recently in the case of *Liddington v 2Gether NHS Foundation Trust [2016] UKEAT/0002/16/DA* in the judgment of Mrs Justice Simler, then President of the EAT, and now Lady Justice Simler in the Court of Appeal. The Employment Tribunal is required to:

> *"1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;*
>
> *2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and*
>
> *3. give reasons for concluding that there is nothing in the grounds advanced by the (applicant) that could lead him to vary or revoke his decision."*

30. In paragraph 34 and 35 of the Judgment, the learned former EAT President, Mrs Justice Simler (now Lady Simler, a Justice of the Supreme Court), stated as follows:

> "*34. In his Reconsideration Judgment the Judge identified the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage. In this case, the Judge addressed each ground in turn. He considered whether was anything in each of the particular grounds relied on that might lead him to vary or revoke his decision. For the reasons he gave, he concluded that there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, 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.*
>
> *35. 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. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly."

31. There is a public policy principle that there must be finality in litigation and reviews or reconsiderations are a limited exception to that principle. In the case of *Stephenson v Golden Wonder Limited [1977] IRLR 474* it was made clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "*second bite of the cherry*". Lord Macdonald, the EAT Judge in Scotland, said that the review provisions were "*not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence produced which was available before*".

32. The Employment Appeal Tribunal went on to say in the case of *Fforde v Black EAT68/80* that this ground does not mean "*that in every case where a litigant is unsuccessful is automatically entitled to have the Tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order*."

33. "In the interests of justice" means the interests of justice to all parties. The EAT provided further guidance in *Reading v EMI Leisure Limited EAT262/81* where it was stated "*when you boil down what it said on [the claimant's] behalf it really comes down to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice", means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation*."

34. I consider that any guidance on the meaning of "the interests of justice" issued under the 2004 Rules (and the earlier Rules) is still relevant to reconsiderations under the ET Rules 2024. I also remind myself that the phrase "in the interests of justice" means the interests of justice to all parties.

35. Further, I have also reminded myself of the guidance to Tribunals in *Newcastle upon Tyne City Council – v- Marsden [2010] ICR 743* and in particular the words of Mr Justice Underhill when commenting on the introduction of the overriding objective (now found in Rule 3 of the ET Rules 2024) and the necessity to review previous decisions and on the subject of a review: "*But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in Jurkowska v Hlmad Ltd. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic" "… that dealing with cases justly requires that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made*."

36. Further, I have also considered the further guidance on the ET Rules 2013 from Her Honour Judge Eady QC (as she then was, now Mrs Justice Eady, EAT President) in her judgment in Outasight VB Limited –v- Brown [2014] UKEAT/0253/14. I have considered that guidance and in particular have noted what is said about the grounds for a reconsideration under the ET Rules 2013: "*In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3)(d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3)(e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules*".

37. In considering matters in the present case, I also reviewed the EAT judgment in *Wolfe v North Middlesex University Hospital NHS Trust [2015] ICR 960 ; [2015] UKEAT/0065/14*, and I have noted, from that judgment, at paragraph 75, what the EAT judge, His Honour Judge Serota QC, stated: "*There is now a long line of authority to the effect that where a would be Appellant believes there has been a material omission on the part of an Employment Tribunal to deal with a significant issue or to give adequate reasons in respect of significant findings, the proper course is not to lodge a Notice of Appeal, but to go straight back to the Employment Tribunal and ask that the omission be repaired. If reasons are given orally, this should be done as soon as practicable on the completion of delivery of the judgment, and if Written Reasons are later handed down as soon as practicable after the Judgment is received. I would like to make clear that it is the duty of advocates to adopt this course in litigation in the Employment Tribunal*."

38. Further, in considering this reconsideration application, I have also taken into account the helpful judicial guidance provided by Her Honour Judge Eady QC, then EAT Judge, and now EAT President, in her judgment in *Scranage v Rochdale Metropolitan Borough Council [2018] UKEAT/0032/17*, at paragraph 22, when considering the relevant legal principles, where she stated as follows: - "*The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that 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*."

39. At *Outasight VB Ltd v Brown*, at paragraphs 27 to 38, the learned EAT Judge (now Mrs Justice Eady, EAT President) reviewed the legal principles. The EAT President, then Mr Justice Langstaff, in *Dundee City Council v Malcolm [2016] UKEATS/0019-21/15*, at paragraph 20, states that the current Rules effected no change of substance to the previous Rules, and that they do not permit a claimant to have a second bite of the cherry, and the broader interests of justice, in particular an interest in the finality

of litigation, remained just as important after the change as it had been before

40. Further, I have also taken into account the Court of Appeal's judgment, in *Ministry of Justice v Burton & Another [2016] EWCA Civ.714*, also reported at [2016] ICR 1128, where Lord Justice Elias, himself a former EAT President, at paragraph 25, refers, without demur, to the principles "recently affirmed by HH Judge Eady in the EAT in *Outasight VB Ltd v Brown UKEAT/0253/14*."

41. Specifically, at paragraph 21 in Burton, Lord Justice Elias had stated that: "*An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on 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…"*

Discussion and decision

42. I have now carefully considered the claimant's written application, and all correspondences up to and including 03 July 2025, including all information within the claimant's reconsideration application, the record of the Preliminary Hearing and the Case Management Orders issued to parties, my own notes of the Preliminary Hearing, and submissions at the Preliminary Hearing (including any documents, and authorities to which reference was made), the Original Judgment issued to parties pursuant to my directions dated 31 January 2025, and also my own obligations under Rule 3 of the ET Rules 2024, being the Tribunal's overriding objective to deal with the case fairly and justly.

43. I consider that the claimant has been given a reasonable opportunity, in advance of this Reconsideration Hearing, to make their application for reconsideration of the Original Judgment and to put forth any grounds in respect thereof.

44. On the test of "*in the interests of justice*", under Rule 68 of the ET Rules 2024, which is what gives this Tribunal jurisdiction in this matter, there is now only one ground for "reconsideration", being that reconsideration "*is necessary in the interests of justice*." That phrase is not defined in the ET Rules 2024 (unlike the position upon which a Tribunal could "review" a Judgment under the former 2004 Rules).

45. While there are many similarities between the former 2004 Rules and the ET Rules 2024, there are some differences between the current Rules 68 to 70 of the ET Rules 2024 and the former 2004 Rules 33 to 36. Reconsideration of a Judgment is one of the two possible ways that a party can challenge an Employment Tribunal's Judgment. The other way, of course, is by way of an appeal to the EAT.

46. Rule 68 confers a general power on the Employment Tribunal, and it stands in contrast to the appellate jurisdiction of the EAT. In most cases, a reconsideration will deal with matters more quickly and at less expense than an appeal to the EAT.

47. In the event that the claimant has chosen to pursue both routes, the EAT will decide next steps in that appeal after it, and parties, have given consideration to this my Reconsideration Judgment.

Disposal

Grounds of claimant's application – is it necessary in the interests of justice to reconsider the Original Judgment?

48. Having assessed the submissions and representations made by the claimant, I am of the view that this reconsideration application in respect of the grounds of the claimant's application should be refused because it is not necessary in the interests of justice to grant the claimant's application.

49. The Tribunal is of the view that it is not in the interests of justice to allow the claimant's application in respect of any of the grounds set out within the claimant's application, and nor would it be in accordance with the Tribunal's overriding objective to deal with the case fairly and justly to grant the claimant's application on any of the grounds within the claimant's application.

50. In reaching this view, I have again reviewed the documents in the file of papers provided at the Preliminary Hearing (documents within the Preliminary Hearing Bundle, any submissions and my notes), all relevant correspondences on the Tribunal file, the relevant statutory provisions and the ET Rules 2024 and case law authorities, any representations made at the hearing, and I have taken account of all of the relevant circumstances in doing so.

51. I do not believe that the Tribunal have made any error of law, but, if an appeal has been (or is subsequently) presented to the EAT, I do recognise that that matter is ultimately a matter for the EAT to decide upon, and not for this Tribunal.

52. As I see things, in considering the Case Management Orders and the strike out warning issued to parties on 10 December 2024, together with the content of the Tribunal file, when the Employment Judge decided to make the Original Judgment on 31 January 2025, the Employment Judge took into account all relevant considerations, and the Tribunal did not have regard to anything irrelevant.

53. The Tribunal took into account all of the circumstances of the case, and the correspondences, documents and submissions before the Tribunal. The Tribunal applied the facts and procedural history to the law, and it reached the conclusions that were reached in the Original Judgment.

54. Now, on reconsideration, the Tribunal do not consider it is necessary in the interests of justice to revoke or vary the Original Judgment and allow the claimant's application. Put simply, the claimant's arguments put within the reconsideration application have not established for me that it would be necessary in the interests of justice for the Original Judgment to be varied or revoked on reconsideration.

55. My view remains essentially the same as it was expressed in the Reasons given at the time in the Tribunal's written Judgment and Reasons ruling on 31 January 2025 and sent to parties on 20 February 2025.

56. As the EAT has made clear, in many other instances, when reviewing any Judgment of an Employment Tribunal, parties should know why they have won or lost, but the Tribunal's decision is not required to be an elaborate formalistic product of refined legal draftsmanship – it must give adequate reasons for its decision, and failure to do so can amount to an error of law giving rise to an appeal to the EAT.

57. The Tribunal gave adequate reasons at the time, when the written Judgment and Reasons were delivered but, in light of the content of the claimant's reconsideration application, I take the opportunity to amplify those earlier reasons here in the Reasons for this Reconsideration Judgment.

58. I am satisfied that the Tribunal did not fail to take into account relevant considerations, and further, that the Tribunal did not have regard to irrelevant considerations.

59. I have included below brief observations in respect of the grounds within the claimant's reconsideration application:

    59.1 The claimant does not set out any good or satisfactory reason for the failure to attend the hearing on 05 December 2024, or indeed in respect of the failure to contact the Tribunal prior to that hearing in respect of their non-attendance. There are no sufficient particulars provided in terms of the issues that are said to have prevented the claimant from attending the hearing. The claimant does not provide the dates during which she was not in the country or copies of the flight tickets referred to. It is not clear why the claimant was unable to participate in the hearing in any event given that the Preliminary Hearing was conducted remotely, by way of a video hearing.

    59.2 The claimant did not contact the Tribunal prior to the hearing on 05 December 2024 to advise that they would be unable to attend the hearing due to family matters or that they were abroad, and they did not apply for a postponement of the hearing.

    59.3 The claimant did not contact the Tribunal following the Clerk to the Tribunal's communications with the claimant on 05 December 2024 by telephone and email to advise that they could not attend the hearing.

    59.4 The claimant did not respond to the Tribunal's strike out warning by 4pm on 03 January 2025 (and no communication had been received from the claimant up to and including the date of the Original Judgment on 31 January 2025). The claimant did not provide their Schedule of Loss or any comments in relation to the respondent's draft List of Issues by 4pm on 03 January 2025. On the basis of the information before the Tribunal, the Tribunal notes that there is no satisfactory reason put forth by the claimant in respect thereof.

    59.5 If the Tribunal is wrong to so find, and the claimant had a satisfactory explanation for not attending the hearing, and. in addition, not being able to

correspond with the Tribunal up to 03 January 2025 (due to the claimant's family matters and the claimant having been abroad until 03 January 2025), the claimant had, thereafter, failed to correspond with the Tribunal between 03 January 2025 and 31 January 2025 (in fact no further correspondence was received from the claimant until 05 March 2025), or to request an extension of time. The claimant has failed to provide an explanation for the claimant's failure to correspond with the Tribunal or to request an extension of time for compliance with the Tribunal's orders after her return to the UK (until 05 March 2025).

59.6 Furthermore, the Tribunal notes that the claimant had not provided a copy of the claimant's Schedule of Loss or any comments in relation to the respondent's draft List of Issues, as at the date of making the reconsideration application.

59.7 The Tribunal has taken account of all the circumstances, including the content of the claimant's application, which includes the reasons put forward by the claimant for non-attendance at the hearing and the details provided relating to the claimant's claim, in reaching its decision.

57. Moreover, having considered all of the claimant's points made in respect of the reconsideration application, I consider the Preliminary Hearing (and any further procedure) was conducted both in accordance with Article 6 of the ECHR (right to a fair trial) and the Tribunal's overriding objective set out in Rule 3 of the ET Rules 2024. In the event, the claimant's failure to actively pursue the claim has meant that there is no reasonable prospect that the Tribunal will be in a position to list a Final Hearing within a reasonable time (Article 6).

58. The Original Judgment remains unaltered having taken a step back to consider the claimant's application in light of the full factual matrix, the procedural history and the submissions that were before the Tribunal at the Preliminary Hearing, the correspondences on the Tribunal's file, and the claimant's application dated 05 March 2025. The Tribunal did not accept the claimant's position that it is in the interests of justice to reconsider the Original Judgment. In my Judgment, it would not be appropriate or proportionate to revisit or to reconsider the Original Judgment (or to list a reconsideration hearing), in circumstances in which there is no reasonable prospect of the Original Judgment being varied or revoked.

60. The Tribunal's conclusions were reached after having considered all the documents, correspondences and submissions before the Tribunal.

62. Having carefully considered the points made by the claimant in this reconsideration application, the Tribunal does not consider that it is necessary in the interests of justice to revoke or vary the Original Judgment in respect of any of the grounds of the claimant's reconsideration application, and the Tribunal adheres to the Original Judgment, for the reasons given then with the Original Judgment, and as now amplified in these Reasons. As such, the Original Judgment stands, and the Tribunal does not set it aside

Conclusion

63. The claimant's application dated 05 March 2025 for reconsideration of the Original Judgment sent to the parties on 20 February 2025 is refused. There is no reasonable prospect of the Original Judgment being varied or revoked for the reasons set out above.

64. Accordingly, the Tribunal does not vary or revoke the Original Judgment in respect of any of the grounds of the claimant's reconsideration application, as the Tribunal confirms the Original Judgment, that being the appropriate disposal having refused the claimant's reconsideration application.

Further procedure

66. The reconsideration application made by the claimant having been refused, no further consideration shall be given to the same and no further directions shall be issued. As the Original Judgment has not been varied or revoked, the Original Judgment is confirmed. There are no further or other applications that have been made in the Employment Tribunal that remain extant.

Employment Judge B Beyzade
Date: 03 July 2025