# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Da Silva

**Respondent:** 1) Getronics Services UK Ltd, 2) Intelligence Resource Ltd, 3) Mr A Holmes and 4) Mr J Patel

# JUDGMENT

The Claimant's application dated 26 May 2025 for reconsideration of the Partially Reserved Judgment and Reasons sent to the parties on 12 May 2025 is refused. There is no reasonable prospect of the original decision being varied or revoked.

# REASONS

**Background**

1. In an email dated 26 May 2025, the Claimant wrote to the Employment Tribunal requesting a reconsideration of my Partially Reserved Judgment and Reasons sent to the parties on 12 May 2025. That email attached three exhibits.

2. In an email dated 28 May 2025, the first, third and fourth Respondents' solicitors wrote inviting the Employment Tribunal to refuse the Claimant's application on the basis that it had no reasonable prospects of success. They were not obliged to do this, given that initially this matter is considered by the Employment Judge to determine whether the application has reasonable prospect of success.

3. The Claimant sent a further email on 27 June 2025 attaching additional supporting documents.

4. My Judgment determined two matters. Firstly, that the Tribunal had no jurisdiction to hear the claims against the third and fourth Respondents. For the avoidance of doubt I also recorded that the claims against all four Respondents were dismissed in their entirety. I gave Judgment and Reasons orally at the hearing. Secondly, my Judgment also dealt with the first, third

and fourth Respondents' costs application and awarded costs against the Claimant in the sum of £6,921.50. I heard submissions from each party, including evidence from the Claimant as to his ability to pay a costs order if I decided to make one. However, due to lack of time I reserved my Judgment as to costs. This is why the document is headed Partially Reserved Judgment. For expediency sake I set out the reasons for both matters within that document.

## The Tribunal Rules on Reconsideration

5. Under the Employment Tribunal Rules of Procedure 2024:

> "69. Except where it is made in the course of a hearing, an application for reconsideration must 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,
>
> 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."

6. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:

   a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted;

   b) 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;

   c) It is not a means by which to have a second bite at the cherry, or is it 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;

   d) Tribunals have a wide discretion whether or not to order reconsideration. Where 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.

## Consideration of the application and conclusions

7. I accept that the Claimant has made this application within the time limit set out in Rule 69.

8. Under that Rule I have the power to reconsider my Judgment where it is necessary in the interests of justice to do so. Under Rule 70(2) if I consider that there are no reasonable prospects of my Judgement being varied or revoked then the application must be refused without going any further.

9. I have carefully considered both emails from the Claimant and the attached documents. I have gone through these by adopting the Claimant's headings and paragraph numbering and set out my response by application of the above principles contained within the Rules.

10. Dealing first with the Claimant's email of 26 May 2025 from paragraph 2 onwards.

11. The Claimant raises the following matters under the heading "A. Procedural Unfairness and Bias":

    Paragraph 1

    a. At paragraph 1 the Claimant alleges procedural unfairness and bias with regard to actions taken by my clerk for that hearing in the sending of emails. The Claimant in effect raise this matter at the hearing and I addressed it at paragraphs 4-6 of my Judgment. I would add that there is nothing untoward arising from my clerk using his direct work email address.

    Paragraph 2

    b. At paragraph 2 under the heading "Late Bundle Admission", the Claimant alleges that the bundle was submitted after the date for compliance within the Case Management Orders set at a previous case management hearing and that I admitted them without justification thereby prejudicing his case.

    c. I would point out that the hearing started at 2.10 pm and was listed for two hours. The hearing ended at 4.50 pm. The bundle was only received at approximately 1.30 pm.

    d. The Claimant did express his concern that the bundle had been provided effectively at the last moment and beyond the date for compliance. However, I addressed this matter at paragraphs 4-6 of my Judgment. He was in effect fixating on this breach and I told him to focus on the substance of his case and having pointed out that the bundle consisted of documents that he already had and would be familiar with. I did not believe that the late provision of the bundle gave rise to any impediment to a fair hearing proceeding. Indeed, I thought that the claimant was attempting to capitalise on this inappropriately.

e. The Claimant further raised the issue of the late admission of the bundle at paragraph 53 b. of my Judgment, in the context of his submissions against the costs application. He suggested that the Respondents had sent the bundle by post and email taking advantage. I again told to him to focus on the top line, as I put it, ie the costs application, and not the issue with the bundle (which we had already dealt with).

f. In addition, although the Claimant does not raise this here, the solicitors for the first, third and fourth respondents also sent a skeleton argument shortly before the hearing, running to 10 pages. I appreciated that the Claimant required the opportunity to read this. I offered him the choice of adjourning for him to read it or for Counsel for the first third and fourth respondents to read it aloud when making her submissions. He was content to do the latter. Whilst this added to the length of the hearing I saw this as a fair and proportionate way to proceed.

Paragraph 3

g. The Claimant alleges that there was Tribunal staff interference in as much as my clerk appeared in the virtual hearing ("CVP") without explanation of his role creating apparent bias.

h. The Claimant did not raise any concern about this at the time. I cannot see anything untoward arising from my clerks appearance in the CVP room. Indeed, it must have been the case that my clerk introduced himself prior to the hearing because he would have been present in the CVP room to check that the parties were present and to deal with any connectivity issues, prior to informing me that we were ready to start.

12. At section B, the Claimant sets out what he defines as an "Error of Law – COT3 Misapplication". He submits that the COT3 agreement only binds the first and second respondents (the signatories) and that I unlawfully extended it to non-signatory employees (third and fourth respondents).

13. The Claimant is simply raising the same points that he made at the hearing and clearly does not agree with my conclusions (specifically at paragraph 47 of my Judgment). He is expressing a view and has not put forward any basis on which this would amount to an error of law.

14. At section C, the Claimant states "Fraudulent Costs Order". That the costs order that I made is vexatious and unreasonable for a number of reasons:

Paragraph 1

a. the Claimant alleges that Counsel's fees were inflated specifically stating that £2000 for a two hour virtual hearing exceeds the ET norms (£300-500/hr).

b. The Claimant did not raise this issue at the hearing. Using my experience and judgment as a solicitor, previously as an Employment Law specialist for many years, I formed the view that I had no reason to

believe this sum to be unreasonable. I do not know where the claimant has got the hourly figures which he states to be "ET norms" from.

Paragraph 2

.

c. The Claimant alleges that I allowed costs in respect of what he refers to as Internal Overheads (Non-Recoverable). Specifically, he refers to £1375 for preparing the bundle and £180 for reviewing emails. He submits that these are internal administrative costs, not recoverable under ET rules and quotes the case of Yerrakalva v Barnsley MBC [2012].

d. This was not a matter that the Claimant raised at the hearing and I am not aware of anything within Yerrakalva v Barnsley which precludes the recovery of costs in respect of preparation of a bundle and reviewing emails. I assume that the Claimant in fact means Barnsley MBC v Yerarkalva [2012] IRLR 78 in the Court of Appeal. However having looked at both the Judgment in Employment Appeal Tribunal and the Court of Appeal, I could not find any reference to this proposition either.

e. Costs are defined at Rule 2(1) of the Employment Tribunal Procedure Rules 2024 as follows:

*"… fees, charges, disbursements or expenses incurred by or on behalf of any party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing)…"*

f. This definition includes costs in respect of matters such as preparation of a bundle and review of emails.

Paragraph 3

g. The Claimant alleges that there is double charging. Again this is not a matter that he raised at the hearing. The Claimant has given one example. However, there was nothing within the Schedule of Costs to indicate double charging to me. It appears that the Claimant is misconstruing different elements of the work undertaken.

Paragraph 4

h. The Claimant alleges that I have allowed costs that were incurred after the case had closed. He is pointing to a matter set out in my findings at paragraph 41 of my Judgment but is quoting it out of context. In his submissions recorded at paragraph 53 c. he raised this issue.

i. The email referred to at paragraph 41 states that as the claim had been withdrawn, there would be no further action on the matter. This was sent on the instruction of a Legal Officer. However, it was clear from the earlier correspondence that whilst the Claimant initially had notified the Tribunal that the claim had been settled via an ACAS COT3 agreement with the first and second respondents (at paragraph 30 of my Judgment), thereafter his correspondence indicated that he was still pursuing his claim (at paragraphs 31 to 42 of my Judgment).

j. This is reflected in my conclusions in respect of the jurisdictional matter within paragraphs 43 to 48 of my Judgment, in particular at paragraph 45. I relied on these findings and conclusions when considering the costs application. Indeed at paragraphs 67 to 69 I set out my conclusions in the context of the costs application, expressly rejecting the Claimant's interpretation of events and the point he repeats within his reconsideration application without adding more.

Paragraph 5

k. The Claimant alleges that I made no assessment of his ability to pay a costs order and ignored his Universal Credit status.

l. At paragraph 54 of my Judgment, I explained to the Claimant that if I was considering making a costs order, I could have regard to his ability to pay. That paragraph sets out the information that he gave during the hearing. He did not disclose that he was in receipt of Universal Credit. Counsel for the first, third and fourth respondents made submissions in response to his submission at paragraph 55.

m. As I said in my conclusions on costs at paragraph 76 of my Judgment, I did not find the Claimant's account of his ability to pay to be compelling. In particular, beyond saying that he was unemployed and had been since 2023, he gave no account of what his financial circumstances were. His explanation as to where the £15,000 he had received by way of the COT3 settlement some six days prior to the hearing did not seem probable on the basis of the information provided and he gave no details of what he said he had spent that money on beyond a series of headings.

n. Whilst the Claimant has now said that he receives Universal Credit of £300 per month, he has not provided any supporting evidence and whilst perhaps it is not necessary for him to do so, I am not swayed in my conclusions in the Judgment, given the account he gave of his ability to pay at the hearing which I found to be uncompelling, given his failure to mention receipt of Universal Credit at the hearing when he had that opportunity to do so and his belated disclosure of this purely by reference to an amount.

o. Whilst I appreciate that the amount of the costs order is significant it was in the face of his uncompelling and scant information as to his ability to pay that I awarded full costs although at paragraph 77 of my Judgment I did urge the parties to consider entering into an instalment agreement if full payment was not possible.

15. On a general level, I would add that I am entitled to take a broad brush approach to costs. However, at paragraph 75 of my Judgment I gave clear consideration to the Schedule of Costs based on the Solicitors' Guideline Hourly Rates in effect from 1 January 2025 and my own knowledge of what I was charged out when I was last in private practice. Similarly, in respect of Counsel's fees.

16. At paragraph 4 the Claimant requests that I set aside the Judgment against the third and fourth Respondents. To be clear, the Claimant had in fact already withdrawn his claims against the first and second respondents on 27 March 2025, as sent out in my findings at paragraphs 30 and 31 of the Judgment. My Judgment determined that under the terms of the COT3 agreement he was precluded from proceeding with his claims against the third and fourth respondents (at paragraphs 47 and 49 of the Judgment. Indeed, for the avoidance of doubt, I dismissed the claims against all four respondents.

17. In addition, the Claimant also makes the following requests, which I deal with for the sake of completeness:

    a. That I strike out the costs order being vexatious. This appears based on a misunderstanding of rule 74 of the Employment Tribunal Procedure Rules 2024 and the powers available.

    b. That I disclose all communications between Tribunal Staff and the Respondents. This again misunderstands the nature of an application for reconsideration. The Claimant will have been sent all communications between the Employment Tribunal parties, save initially for those he has identified relating to the bundle. This is not something that falls within an application for reconsideration.

    c. That I provide written guidance to take the third and fourth Respondents to a County Court. The Employment Tribunal's function is not to provide legal advice and again this perhaps misunderstands the nature of this application. I would direct the Claimant to take his own advice and would suggest looking on the gov.uk or Citizens Advice websites for guidance.

18. I have considered the points made in the Claimant's email of 27 June 2025 and looked at the supporting documents provided. I simply do not accept the contentions that the Claimant makes in respect of each of the emails that he refers to and in effect have addressed these matters within my findings and conclusions in my Judgment.

19. In conclusion then, having gone through all of the points raised, I find that the Claimant's application for a reconsideration of my Judgment has no reasonable prospect of success. It is not in the interests of justice to revoke or vary it.

Employment Judge Tsamados
10 July 2025

Public access to Employment Tribunal Judgments
All judgments and written reasons for the judgments are published online shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case. They can be found at: www.gov.uk/employment-tribunal-decisions.