EMPLOYMENT TRIBUNALS

Claimant: Mr Mesbaque Chowdhury

Respondent: Wembley Towers Limited

JUDGMENT

The Claimant's application dated 10 January 2025 for reconsideration of the judgment sent to the parties on 3 January 2025 is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. I have undertaken preliminary consideration of the Claimant's application for reconsideration.

2. The basis of the Claimant's application is that the Claimant states "I was unwell at the time to attend amd the decision made is not just or fair."

3. The Claimant made the application on 10 January 2025 by email but did not copy the application to the Respondent until 2 May 2025.

The Law

4. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 68 of the 2024 Rules of Tribunal Procedure).

5. Rule 70(1) of the 2024 Rules of Tribunal Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

6. Rule 69 of the 2024 Rules of Tribunal Procedure says "*Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary."*

7. In *Outasight VB Ltd v Brown [2015] ICR D11*, the Employment Appeals Tribunal ('EAT') confirmed that the law regarding the reconsideration of a judgment in light of new evidence did not change with the introduction of the 2013 or 2024 Tribunal Rules. The interests of justice test include the conditions set out in Ladd v Marshall [1954] 3 ALL ER 745. In summary: 1) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial, 2) the evidence must be such that, if given, it would probably have an important influence on the result of the case, 3) the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

8. The approach to be taken to applications for reconsideration was considered in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. In paragraph 34 of that decision, Simler P stated 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 by 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."*

9. The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 where Elias LJ said that: *"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; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

10. As is the case with all powers under the 2024 Tribunal Rules of Procedure, any preliminary consideration under rule 70(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

Conclusion

11. The Employment Tribunal were aware that the Claimant that the Claimant said that he was unwell on the date of the Employment Tribunal hearing. The Claimant was required to provide evidence of his inability to attend the proceedings. The Claimant was given an opportunity to provide satisfactory evidence on 2 occasions and failed to do so. Nothing the Claimant has said in his application changes this. I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. I must also have regard to the public interest requirement so far as is possible there be finality of litigation. In the circumstances, the Claimant's application for reconsideration is refused.

Approved

Employment Judge Young
Dated: 20 June 2025

JUDGMENT SENT TO THE PARTIES ON

11/07/2025

FOR THE TRIBUNAL OFFICE