



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms S Oxborough

v

Sainsburys Supermarkets Limited

**Tribunal:** Sheffield

**Dated:** 4 July 2025

**Before:** Employment Judge James

## RECONSIDERATION JUDGMENT

**(1) The application for Reconsideration of the Judgment dated 26 November 2024, and subsequent written reasons dated 12 May 2025, is refused because it has no reasonable prospect of success, for the reasons set out below (Rule 70(2), The Employment Tribunal Procedure Rules 2024).**

## REASONS

1. The Judgment dated 26 November 2024, was sent to the parties on 2 December 2024. Due to an administrative error, the written reasons which were subsequently requested by the claimant, were not provided to her until 12 May 2025. In an email dated 20 February 2025, the claimant had made a request for reconsideration of the Judgment. The claimant was invited to make any further representations in relation to her application for reconsideration, within 14 days of receipt of the written reasons. The claimant has not made any further representations.

### **The Law**

2. Rules 68 to 71 of the Employment Tribunal Procedure Rules 2024 provide as follows:

### **RECONSIDERATION OF JUDGMENTS**

#### ***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.

#### **Reconsideration by the Tribunal on its own initiative**

71. Where the Tribunal proposes to reconsider a judgment on its own initiative, it must inform the parties of the reasons why the decision is being reconsidered and the judgment must be reconsidered (as if an application had been made and not refused) in accordance with **rule 70(3) to (5)** (process for reconsideration).

3. Whilst the discretion under the rules is wide under the 'interests of justice' test, it is not boundless; it must be exercised judicially and with regard, not just to

the interests of the party seeking the review, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation - *Flint v Eastern Electricity Board* [1975] ICR 395 at 401, per Phillips J, at 404.

## Decision

4. The email sent by the claimant on 20 February 2025 includes four video clips without any explanation of what they show, when they were taken or who by. It is assumed that they are videos of Georgia Booth at work. Ms Booth was not a witness who appeared before the Tribunal. The claimant appears to assume that the respondent had argued that she was not available to attend the hearing; when in fact Ms Booth did not attend the hearing because her attendance was not considered by the respondent to be necessary. It was Ms Vanson, the dismissing officer, who was not available to give evidence, because she had left the business by the time of the hearing.
5. The claimant also includes a number of text messages, which it is assumed relate to the claimant's mistaken belief that Ms Booth was available to attend the hearing, and that the Tribunal was being misled about her availability. That argument is misconceived, for the reasons set out above.
6. The claimant has also included details of a without prejudice offer. Since the offer was made without prejudice, that should not have been sent to the Tribunal. It has not been taken into account by the Tribunal in relation to this decision. In any event, it has no relevance to the issues that arise on reconsideration.
7. The reasons for the reconsideration application by the claimant are as follows:
  - a. that Sainsbury's witnesses were 'in contempt' and she has evidence to back this up;
  - b. the claimant says Mr Cunningham, one of the witnesses lied, although she does not state what the lie is alleged to be;
  - c. the CCTV footage was not the right footage;
  - d. that the case had been allowed to go to a full hearing after a preliminary hearing, so the Judge who conduct the preliminary hearing must have thought there was more to the case, otherwise the Judge would not have let the case go to a final hearing;
  - e. there is no evidence that the claimant left the store with stolen goods, she offered to pay for them but was later dismissed;
  - f. the reason for the alleged conduct was because of a genuine technology issue, which had caused the problem.

### 'In contempt'

8. The claimant does not explain why the respondent's witnesses were in contempt, or how this would affect the justness of the decision. This does not therefore provide a basis for reconsideration

### Alleged lying by Mr Cunningham

9. The claimant does not elaborate as to how or why Mr Cunningham is alleged to have lied. It may be that the claimant is referring to the fact that he did not recall her mentioning her disability in a meeting with him, a few weeks prior to

her dismissal. The Tribunal did not make any finding that Mr Cunningham lied about that - just that he could not remember. In that situation, the Tribunal preferred the evidence of the claimant on that factual issue. However, that finding made no difference to the Tribunal's decision.

CCTV footage

10. The issue raised by the claimant about the CCTV footage was considered at the hearing and has been dealt with in the written reasons. Again, there is no reasonable basis for reconsideration, on the basis of the representations made by the claimant.

Case allowed to go to full hearing

11. This argument does not provide any reasonable basis for reconsideration. The fact that the case was allowed to go to a full hearing does not mean that the claimant's claim should automatically have succeeded. It still had to be determined on the basis of evidence. The Tribunal arrived at the Judgment on the basis of the evidence presented.

Lack of evidence

12. The claimant did not leave the store with the unpaid for goods because she was asked to speak with a manager before she had left. The Tribunal took into account that the claimant offered to pay for them. The question the Tribunal had to answer was whether the respondent reasonably believed that the claimant had committed misconduct. For the reasons given in the Judgment, the Tribunal decided that the respondent did have reasonable grounds for that belief. The Tribunal acknowledges that this is a somewhat subtle distinction; but the conclusion reached is not the same as a finding that the claimant did try to steal those goods. This argument does not provide any reasonable basis for reconsideration.

Genuine technology issue

13. The circumstances surrounding the dismissal of the claimant were explored fully in evidence before the Tribunal, relevant findings of fact have been made, and appropriate conclusions have been reached, on the basis of those findings of fact. This argument does not provide any reasonable basis for reconsideration.

**Overall conclusion**

14. The claimant has not provided any reasonable grounds in support of the application for reconsideration. The reconsideration application is therefore rejected under Rule 70(2) because it has no reasonable prospect of success.

Employment Judge James

Dated 4 July 2025

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