



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Atkinson

**Respondent:** Caterpillar UK Limited

## JUDGMENT

I refuse the claimant's applications for reconsideration of:

- (a) the judgment of the tribunal made on 5 December 2024; and
- (b) the decision of 4 April 2025 to refuse the claimant's request for reconsideration.

## REASONS

1. By an application made on 1 April 2025 with supplementary submissions made on 3 April 2025 Mr Atkinson sought reconsideration of the tribunal's Judgment in this matter made on 5 December 2024. By that judgment the tribunal dismissed Mr Atkinson's complaint of unfair dismissal.
2. I originally refused the application for reconsideration because I thought it had been made outside the time permitted by rule 69 and that there were no grounds to extend time for the application. Mr Atkinson was told of that decision on 4 April.
3. Mr Atkinson then wrote pointing out that the written reasons had not been sent to him until 28 March 2025 and therefore his application for reconsideration had been made in time.
4. Mr Atkinson is correct. His application was made in time and I should not have refused it on the grounds that I did. What I should have done is considered it under Rule 70. Therefore, I do that now.
5. A tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so: Rule 68.
6. Mr Atkinson's application for a reconsideration must first be considered under

rule 70(2). If I consider there is no reasonable prospect of the original decision being varied or revoked, I must refuse the application. If I consider that there is some reasonable prospect of the original decision being varied or revoked I must seek a response from the respondent and seek the views of the parties on whether the matter can be determined without a hearing.

7. In deciding whether it is necessary to reconsider a judgment in the interests of justice, the tribunal must seek to give effect to the overriding objective to deal with cases fairly and justly. That includes taking into account established principles. Those established principles mean the tribunal must have regard not just to the interests of the party seeking the review, but also to the facts that a successful party should in general be entitled to regard a tribunal's decision as final and that it is very much in the interests of the general public that proceedings of this kind should be as final as possible.
8. In his supplementary submissions of 3 April 2025 Mr Atkinson is seeking to rely on new evidence. Where it is sought to persuade a tribunal, in the interests of justice, to reconsider its judgment on the basis of new evidence the test set out in *Ladd v Marshall* applies. Normally that means showing:
  - (a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing;
  - (b) that it is relevant and would probably have had an important influence on the hearing; and
  - (c) that it is apparently credible.
9. Mr Atkinson is seeking to rely on a facebook messenger message he says he received from a colleague after the hearing in which he says the colleague said:  
'I didn't think you'd use our private conversations and name as evidence.  
I'm now in a Disciplinary at work next week.'
10. Mr Atkinson has not provided a copy of the message but for present purposes I assume it exists and that it was received after the hearing as Mr Atkinson says. On that basis it is not evidence that could have been obtained for use at the original hearing.
11. As for the relevance of the evidence and the influence it would have had on the hearing, Mr Atkinson says this message shows that the individual who sent it 'was later subjected to a disciplinary process, shortly after private correspondence was referred to in this case.' Mr Atkinson says he submits this 'as further context to illustrate the nature of the Respondent's internal culture, and to support my concern that colleagues who were involved in this matter were vulnerable to retaliatory action.' He also refers to the fact that he had referred, before the hearing, to the possibility of retaliation against the senders of messages he wished to rely on in evidence.
12. What Mr Atkinson does not do, however, is identify which of the specific issues I had to decide (as set out at paragraph 4 of the written reasons) this evidence could have been relevant to and which findings of fact this could have made a difference to. The sender of the message Mr Atkinson wishes to rely on is the

person who sent the messages I referred to at paragraph 21 of my written reasons, which messages I found to have no probative value. Having considered what Mr Atkinson says about this new message, I am of the view that he has no reasonable prospect of showing that the additional evidence he now seeks to put forward would have had an important influence on a hearing of Mr Atkinson's claim.

13. Mr Atkinson is also seeking to rely on an email he says the respondent disclosed to him in response to a data subject access request. I assume for present purposes that Mr Atkinson is right when he says the respondent did not disclose this document during the course of proceedings. And on that premise I accept that the evidence referred to by Mr Atkinson in his submissions was not available to him at the hearing.

14. The new evidence is said to be an email Mr Rayner sent in which he said

*'Jeff drove round with a loaded forklift (2 Booms) and shouted 'I'm here, what do you want in an aggressive manor.'*

*'..he kept interrupting me and telling me 'Stop interfering in my work area, it is a work environment stop interfering.'"*

15. Again, Mr Atkinson does not identify which of the specific issues I had to decide (as set out at paragraph 4 of the written reasons) this evidence could have been relevant to and which findings of fact this could have made a difference to. I am of the view that Mr Atkinson has no reasonable prospect of showing that the additional evidence he now seeks to put forward would have had an important influence on a hearing of Mr Atkinson's claim.

16. In respect of Mr Atkinson's other submissions made in his original application for reconsideration, the basis of the Mr Atkinson's application, in essence, is that he disagrees with my assessment of the evidence and findings of fact and is seeking to reargue his case.

17. As Simler P said in *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA:

*"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."*

18. Mr Atkinson is of course entitled to disagree with my assessment of the

evidence. That is not a proper basis on which to overturn the judgment, however.

19. I consider there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application for reconsideration.

Employment Judge Aspden

Date 26 June 2025