EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000114/2025

Held in Chambers on 23 June 2025
[Reconsideration application and wasted costs application]

Employment Judge Campbell

Mr D Canning **Claimant**

Edison Group Ltd **Respondent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. There is no reasonable prospect of the original judgment dismissing the claim being varied or revoked, and the application for reconsideration is refused; and

2. The application for an order for either expenses (costs) or a preparation time order is also refused.

REASONS

The claimant's application for reconsideration

1. The Tribunal dismissed the claim on 29 April 2025 on the basis that it had no reasonable prospects of success. The claimant applied for reconsideration of that decision.

2. By way of brief background to the claim, the claimant sought payment in respect of salary, benefits, accrued holidays and notice from Mr Calum Melville, a director of his former employer, Principal Building Limited (referred

to below as **'PBL'** for brevity). Shortly after raising the claim he submitted what he said were his written contract of employment and a payslip. Both stated his employer to be PBL with a place of business in East Kilbride. The respondent's designation was accordingly changed to PBL.

3. Companies House records show that a provisional liquidator was appointed to PBL on 30 December 2024 with the purpose of winding the company up, and a formal winding up order was issued by Kilmarnock sheriff court on 20 March 2025. Mr Melville has been a director of the company since 2 November 2022 and at the date of this judgment remains one. This claim was presented to the tribunal on 15 January 2025.

4. As the claim was not successfully served on the respondent the claimant provided an alternative address used by Edison Group Limited, said to be the parent company of PBL. Upon service of the claim there, a response was returned but in the name of Edison Group Limited ('EGL'). This was understandable given that PBL was under the stewardship of liquidators and not another company in the group, if that was the status of EGL. However, EGL was not a party to the claim. The response said that the claimant was not, and never had been, an employee of EGL.

5. The claimant wrote to the Tribunal on 9 April 2025 to 'ask the tribunal to consider the following', then listed a number of points suggesting that PBL and EGL had common directors, had management which was 'intertwined', and that he had performed work for other companies in the group. He believed that EGL was a 'controlling mind or shadow employer' and that the group as a whole did not have sufficiently distinct legal boundaries between its constituent companies. He referred to the case of ***Autoclenz Limited v Belcher and others UKEAT/0160/08*** in support of a request that 'the tribunal consider, whether [EGL], by virtue of its relationship and shared management, should be treated as a connected or controlling party, and that my claim be allowed to proceed accordingly'.

6. A judge issued an order to the claimant on 9 April 2025 to provide reasons within a fourteen-day period why the claim should not be dismissed.

7. The claimant replied on 23 April 2025. He added to his previous arguments that his contract with PBL contained a term allowing the transfer of his employment to another group company.

8. On consideration of the claimant's correspondence the claim was dismissed on 29 April 2025.

9. The rules regarding reconsideration of judgments (of which the dismissal of the claim was one) are found in the Employment Tribunal Procedure Rules 2024 (referred to in this judgment as 'the **rules**'). Specifically, rules 68 to 71 apply.

10. Reconsideration can be by way of a hearing or based on written representations and evidence provided by the parties. A decision was taken to adopt the latter approach, given the claimant had clearly explained his position in writing and provided supporting documents. It was not proportionate to hold a hearing, which would have involved further time and expense, yet be unlikely to yield anything beyond what was in the documents. I was prepared to view the claimant's case at its highest at this point, in the sense of assuming that the factual matters he wished to prove by way of his supporting documents were capable of being accepted as true by a Tribunal at a full hearing.

11. The claimant was notified of the option to seek reconsideration and the 14-day time limit for doing so. He applied on 13 May 2025 for an extension of time on the basis that he was out of the country and this was granted. In the same email he gave the basis for his wish to have the judgment reconsidered, which was as follows:

"While my formal contract of employment was with Principal Building Ltd, I maintain that Edison Group, and in particular its sole directors Mr Calum Melville, were the controlling party in all commercial, operational and employment-related decisions across the group of companies. My day-to-day role extended across several group entities at the direction of Edison Group, and the following evidence is provided in support of that position:'

12. There then followed a series of 22 numbered points, some with links to external websites such as newspapers and LinkedIn. Along with those he attached a number of documents such as an internal grievance he said he had raised about the subject matter of the claim (among other concerns), namely arrears of pay and holidays.

13. A Tribunal must consider whether there is any reasonable prospect of the original judgment being varied or revoked – rule 70(2). If it believes there is no reasonable prospect of that, the application must be refused without further procedure.

14. I allowed the parties to provide any further material they considered to be relevant before addressing the question of whether there was any reasonable prospect of the application succeeding. On 20 May 2025 the claimant submitted what were said to be statements of four individuals connected to the group. The focus of those documents, in keeping with the claimant's case, was that certain functions and interactions were shared across the group. On 26 May 2025 he provided extensive further material, in which again the focus was shared activities across the group. He added to this by way of an email the following day, referencing a personal guarantee given by the Managing Director of PBL to another company and how debt was managed between companies in the group.

15. Mr Melville emailed the tribunal on 27 May 2025. He argued that the claimant knew full well who his employer was, and that the suggestion that EGL be found liable because he owned it and utilised premises across companies in the group to be 'laughable'.

16. The claimant's material fell some way short of even credibly suggesting that his employer was any entity other than PBL. By his own admission and on his own evidence his only employer was PBL. His argument was that the legal relationship as understood by the parties to exist and as documented should be set aside to allow another company in the same group be made liable for sums owed to him in connection with his employment. This goes against established principles of both company and employment law. Each company

is a separate legal entity, event where it is part of a group structure by virtue of common ownership of a majority of its shares, and even when its directors are also directors on another company. It is completely lawful and commonplace for companies within a group to interact and transact with each other, to owe each other money, to have directors in common, and to share the services of employees and other functions such as IT and advertising. It is true that a tribunal can, based on relevant evidence, conclude that a claimant's employer is in fact company 'B' when it began as company 'A' because there has been a substantial transfer of functions from one to the other under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and that can occur between companies within a group even when not formally documented. However, this was not the claimant's argument and in any event there was no evidence of it in his case.

17. The claimant had referred to the decision of the Employment Appeal Tribunal in ***Autoclenz.*** That did not assist him in his case. That decision was to do with the question of whether an individual had the status of an employee or a worker (or neither) in circumstances where they provided their services to only one party and there was only one potential employer. The claimant's case was that, because of the interplay between the companies within the EGL group at management or director level, EGL should be found liable to pay him the sums outstanding to him on the termination of his employment. That is different and, as stated above, contrary to the fundamental principles of company law.

18. I therefore concluded that, despite the amount of material provided by the claimant in support of his application for reconsideration, he had added nothing of substance since it had been dismissed. It still had no reasonable prospect of success.

19. For the above reasons, the reconsideration application was rejected.

The application by Mr Melville for an expenses (costs) and/or preparation time order

20. The Tribunal has power under the rules to order a party to pay another party a sum of money in respect of the costs they have incurred directly, if self-represented, or via a third party if represented. The provisions are contained in rule 73. The term ‘’costs’ is recognised to be that used in England and Wales, with the Scottish equivalent term being ‘expenses’. Both mean the same thing in this context.

21. To be more specific:

    a. A party can be granted a ‘costs [or expenses] order’ under rule 73(1) to cover fees incurred with a legal or lay representative; and

    b. A ‘preparation time order’ can be granted under rule 73(2) to compensate a party for its own time spent in preparing its case.

22. Importantly, a Tribunal may not issue both types of order in favour of a party in the same case – rule 73(3).

23. The rules envisage a number of scenarios where either type of order must be considered– rule 74. For the purposes of this case those include where:

    a. a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted, or

    b. any claim, response or reply had no reasonable prospect of success.

24. The obligation to consider making an order in any of the above circumstances does not mean that the order must be made. It need only be considered and there may be reasons to make it or not to make it.

25. Mr Melville intimated by email dated 30 April 2025 that it had incurred £6,200.00 to defend the claim. Mr Melville said that ‘Because the claim is obviously vexatious I ask the tribunal to award [the respondent] the £6,200.00

payable by Mr Canning'. He said that the claimant had known 'from day 1' that the claim was 'spurious and vexatious'.

26. The claimant replied later the same day to say that he categorically rejected the suggestion that the claim was vexatious and that an order of costs should be made. To summarise, he said that:

    a. He submitted his claim in good faith;

    b. It was based on factual evidence of his rights being breached;

    c. He did not intend to harass, inconvenience or target Mr Melville personally;

    d. He engaged in the process in a respectful and constructive manner.

27. He added by way of a further email that day that he had no history of raising abusive or frivolous claims, he tried to resolve the matter internally through a grievance process before resorting to litigation, and he wished to explore the extent to which one company could be found responsible for the obligations of another when under the same ownership or directorship. It was 'not pursued lightly' and with a genuine belief that the corporate structure should be scrutinised.

28. On 27 May 2025 Mr Melville provided further details in support of his application. He said that:

    a. Services to EGL had been provided by another company which he owned, Edison Capital Limited, in the amount of 17 hours at a rate of £300 per hour, totalling £5,100;

    b. Mr Melville had paid a law firm the sum of £3,000 on account, but they would not render an invoice to him until the case was concluded; and

    c. The claimant knew he was raising a vexatious claim from the beginning and could have withdrawn it at various earlier stages of its progress.

29. Mr Melville provided an invoice in support of point (b) above, rendered by Edison Capital Limited to EGL covering 'management and professional services'. VAT was added to the total to produce a final figure of £6,120.00 (not the earlier quoted figure of £6,200). He said he would obtain written confirmation of the payment he had made to the law firm, but this was not later provided.

30. The claimant responded on the same day. He said in reply that:

    a. There was no evidential support for either component of the claim, such as invoices, time records, engagement letters or cost breakdowns;

    b. The claimed hourly rate for Mr Melville's time was self-determined and excessive; and

    c. The law firm was understood to represent Mr Melville and/or his companies across a range of matters, and any payment made to them need not be exclusively for services in relation to this claim.

31. I considered first the wording of rule74(2) as referred to above. As has been found in relation to the claimant's reconsideration application, the claim had no reasonable prospect of success. This obliged me to consider whether an order for expenses or a preparation time order (but not both) should be made.

32. I reached the view that the capacity in which Edison Capital Limited rendered any services to EGL would fall within the term 'lay representative' in rule 73(1), so that both sums claimed by Mr Melville could be the subject of an expenses order but not a preparation time order.

33. I applied the guidance of the Employment Appeal Tribunal in ***Radia v Jefferies International Ltd UKEAT/0007/18*** by approaching the exercise as follows:

    a. First, did the claim in fact have no reasonable prospects of success – the answer to which as stated above was 'yes';

b. Next, did the claimant know, or ought he reasonably to have known when raising his claim that that was the case. This is discussed immediately below.

34. There was no evidence that the claimant positively knew that his claim had no reasonable prospect of success. He clearly believed that it could succeed and went to some efforts to explain why, to gather and submit evidence in support, and on the face of it obtain the input of others. He was simply incorrect to think that the intra-group activities that he was aware of, or understood to have happened, displaced the fact (accepted by him) that his employer was one particular company in that group.

35. The real question was therefore whether the claimant ought to have known that his claim had no reasonable prospect. This is a more balanced question. With hindsight it is clear that his claim has no realistic basis, but to reach that conclusion requires some knowledge of both employment and company law which a layperson would not necessarily have. Added to that was the fact of the insolvency of PBL and the potential effect of any specific rules in that sphere. The claimant was not represented by anyone with legal knowledge.

36. Ultimately I reached the view that the claimant's view of his claim was genuine and that it could not be said that he should have known it had no reasonable prospect of success.

37. For completeness, nor did I find that the claimant's conduct was of a type meeting any of the other criteria within rule 74. The claimant had pursued his case energetically but not vexatiously, abusively, unreasonably or disruptively.

38. In any event, considering the specifics and quantum of Mr Melville's claim:

a. It was made on behalf of EGL, which was not a party to the action, and therefore that company had no apparent right to seek payment of its legal expenses under the rules;

b. The claim in respect of services provided Edison Capital Limited lacked sufficient detail in terms of what specific advice was given and when;

c. The claim in respect of services provided by the law firm similarly lacked adequate detail, and further the expenses had not been properly incurred, merely being at best a possibility in the future.

39. In all of the circumstances therefore an expenses order will not be made.

Date sent to parties **04 July 2025**