EMPLOYMENT TRIBUNALS

Claimant: **Mr G Cummings**

Respondent: **Sandmaster (UK) Holdings Ltd**

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application dated 10 February 2025 for reconsideration of the judgment (with written reasons) dated 28 January 2025 sent to the parties on 3 February 2025 is granted to the extent the judgment is varied to include reasons in relation to Paragraph 20(a). Subject to this variation, the original decision is confirmed.

REASONS

1. By a Reserved Judgment dated 28 January 2025 and sent to the parties on 3 February 2025, the Tribunal refused the claimant's application for Interim Relief.

2. By email dated 10 February 2025 the claimant made an application for reconsideration in a document of 4 pages.

The Law

3. Under Rule 68(1) of the Employment Tribunal Procedure Rules 2024, the Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

4. Rule 69 provides that an application for reconsideration under Rule 68 must be made in writing within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

5. The process by which the Tribunal considers an application for reconsideration is set out in Rules 70(2),(3)(4)&(5).

6. The Tribunal has discretion to reconsider a judgment if it considers it to be in the interests of justice to do so. Rule 70(2) requires the Judge to dismiss the application if the Judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt

with under the remainder of Rule 70.

7. In deciding whether or not to reconsider the judgment, the Tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

8. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

9. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows: "34. […] *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.*
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."

The Application

10. In compliance with Rule 69 the claimant's application for reconsideration was made within the required 14 days of the date on which the judgment was sent to the parties.

11. Rule 70(1) requires the Tribunal to consider whether there is any reasonable prospect of the original decision being varied or revoked. The Tribunal is required to decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. The Tribunal has considered the application with this test in mind.

12. The application for reconsideration is made on the ground the Tribunal *"missed out completely anything relating to being denied and/or made difficult the assertion of the right to be accompanied to a grievance hearing.*" This is in relation to Paragraph 20(a) in the judgment. The application is essentially

requesting the Tribunal's reasons given orally at the hearing.

13. On a review of the judgment the claimant is correct in pointing out the judgment does not set out the decision and/or reasons in relation to this ground. To this extent only, the judgment is defective and is a potential ground of appeal to the Employment Appeals Tribunal. On this basis, it cannot be said the application has no reasonable prospects of success. The Tribunal has also given consideration to the overriding objective to deal with cases fairly and justly.

14. In considering the application, the Tribunal determined it was able to deal with the application without a hearing or the respondent's input because the Tribunal is merely confirming the decision and reasons given orally at the hearing.

15. To remedy the omission the Tribunal sets out its decision with reasons in relation to Paragraph 20(a) of the judgment.

16. An employees right to be accompanied at a grievance meeting is confirmed by Section 10 of the Employment Relations Act 1999 ("ERA 1999"). There is no provision in the ERA 1999 or Employment Rights Act 1996 ("ERA 1996") linking such a breach to fall within any of the qualifying categories of dismissal that enable an application for interim relief under s128 ERA 1996. Therefore the failure to inform or allow accompaniment at a grievance hearing is not a qualifying reason for interim relief. Further, where an employer breaches this right, this would amount to a statutory breach for which the remedy lies in a claim under Section 11 ERA 1999. The Tribunal therefore has no jurisdiction to grant interim relief on this ground. Further, the claimant was not dismissed for asserting a statutory right. For these reasons the claimant's application under this ground for interim relief is misconceived at law.

Determination of the application

17. Accordingly, the original judgment is varied to include the above Paragraph 16 at Paragraph 20(a) of the judgment. Subject to this variation only, the judgment is confirmed.

18. For the reasons set out above, the application for reconsideration is granted to the extent the judgment is varied.

Approved By
Employment Judge Bansal
18 July 2025