



EMPLOYMENT TRIBUNALS

Claimant: Ms Amber Stoter

Respondent: Gain Healthcare Ltd

JUDGMENT

The Respondent's application dated **11 July 2025** for reconsideration of the judgment sent to the parties on **16 June 2025** with written reasons sent on **27 June 2025** is refused.

REASONS

1. The Respondent applies under rule 68-70 Employment Tribunal Procedure Rules 2024 for reconsideration of the Tribunal's judgment on liability following a final hearing in the above claim.
2. Rule 68(1) provides that a Tribunal may reconsider a judgment where it is necessary in the interests of justice to do so. Rule 70(1),(2) requires the Tribunal to consider the application and whether there is no reasonable prospect of the judgment being varied or revoked. If there is no such reasonable prospect, the application must be refused. Rule 70(3)-(5) set out the requirements for determination of the application if there is such a reasonable prospect.

3. The Respondent's application is based on new evidence that was not presented to the Tribunal at the final hearing. In considering an application for reconsideration based on new evidence, the principles in Ladd v Marshall [1954] 1 WLR 1489 as applied by the EAT in Outasight VB Limited v Brown [2014] UKEAT 0253/14/211 must be followed. The Tribunal must consider whether the new evidence:
- a. could not have been obtained with reasonable diligence for use at the trial;
 - b. is such that if given would probably have an important influence on the result of the case (although it need not be decisive); and
 - c. is apparently credible.

The Respondent must satisfy all three conditions for a reconsideration to be granted in the interests of justice, save potentially for exceptional circumstances (per Outasight).

4. As to the first condition, whilst the specific medical attendances relied upon in evidence post-date the final hearing by 5-8 weeks, the Respondent has given no explanation as to why medical evidence, if considered relevant, was not disclosed prior to the final hearing and was not relied upon or put before the Tribunal at the final hearing.
5. The Respondent's main witness states that she had been suffering from health issues '...For a significant period leading up to, during and after the Tribunal hearing..'. She states that 'At the time of the Tribunal hearing in May 2025, these symptoms were actively and substantially affecting my ability to function optimally'. On this basis, medical evidence could have been obtained with reasonable diligence prior to the final hearing for use at that hearing, not least because the Respondent placed the medical

condition of their witness in issue when applying for her to give evidence remotely at the outset of the hearing.

6. In the Tribunal's judgment, the Respondent has no reasonable prospect of satisfying the first condition in Ladd v Marshall. Medical evidence, if important, could and should have been put before the Tribunal at the previous hearing based on the medical condition affecting the relevant witness for a significant period prior to the hearing.
7. As to the second condition, contrary to the submissions in the Respondent's application the Tribunal's findings on credibility were not based on symptoms of a medical condition. The new evidence does not directly address the full basis of the Tribunal's adverse credibility findings relating to inconsistencies in documents and lack of documentary support for the reason for dismissal. These findings were not based on the way in which the Respondent's main witness engaged with or responded to questions. Further, if anything, the new evidence appears to support the proposition that the account of the Respondent's main witness in oral evidence was not reliable.
8. In the Tribunal's judgment, the respondent has no reasonable prospect of satisfying the second condition in Ladd v Marshall. The new evidence if given would probably not have an important influence on the case.
9. Further, in the Tribunal's judgment no exceptional circumstances are set out in the Respondent's new evidence. This is a straightforward case where, for reasons known only to the Respondent, it chose not to adduce medical evidence before the final hearing, and upon receiving the Tribunal's judgment chose to seek to rely on medical evidence for this application of the type that it could reasonably have obtained and relied on in the first instance.

10. In the round, the Respondent has no reasonable prospect of establishing that it is in the interests of justice to reconsider the Tribunal's judgment, bearing in mind the importance of finality in litigation and avoiding 'second bites of the cherry' (per Outasight). There is no reasonable prospect of the judgment of 16 June 2025 being varied or revoked. The application is refused.

Approved by:

Employment Judge Baran

29 July 2025

JUDGMENT SENT TO THE PARTIES ON

31 July 2025

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FOR THE TRIBUNAL OFFICE