EMPLOYMENT TRIBUNALS

Claimant: Ms M McGrath

Respondent: Danielle Moyser

JUDGMENT

The claimant's application dated **15 July 2025** for reconsideration of the judgment, sent to the parties on **20 June 2025** is refused as it was made out of time and because, in any event, it has no reasonable prospects of success.

REASONS

1. Rules 68-70 of the Tribunal Rules provides as follows:

70. Principles
(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..

69. Application for reconsideration
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..

70.— Process for reconsideration
(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.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 70(2) requires the judge to dismiss an 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.

3. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

4. 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.

5. 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.

6. Under the current version of the rules, there is a single ground for reconsideration — namely, "where it is *necessary in the interests of justice".* In *Outasight VB Ltd v Brown 2015 ICR D11,* the EAT explained that the 2013 revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Earlier versions of the rules had included specific examples of potential grounds for reconsideration; the omission of those specific examples did not mean that those things were no longer possible routes to reconsideration; an application relying on any of

those arguments can still be made in reliance on the "interests of justice" ground.

7. Previous appellate decisions (even under earlier versions of the Rules) can provide helpful guidance to a judge, but they are not intended as a checklist. The individual circumstances of the particular application have to be considered on their own merits.

8. It is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

9. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis: [2023] EAT 40

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

10. Rule 21deal with applications for extension of time for presenting response. Where such an application is granted, then, because of Rule 21(5), any judgment that has been issued under Rule 22 must be set aside.

11. The Employment Appeal Tribunal's decision in Kwik Save Stores Ltd v Swain and ors 1997 ICR 49 sets out the correct test for granting an extension of time for a response under version of the rules which was then in force. Although the new rule is worded differently, the case remains relevant to the question of whether, having regard to the overriding objective, an application for an extension of time to submit a response should be granted.

12. In Kwik Save, the employer's responses (in respect of claims from different claimants) had been entered between 14 and 26 days late. The employer applied for extensions of time. It submitted that its failure to comply with the time limits had been due to an oversight. The tribunal judge found the employer's explanation to be unsatisfactory and refused to grant the extensions of time. The employer appealed to the EAT, arguing that the judge had exercised his discretion incorrectly. The EAT stated that the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice. In particular, the EAT held that, when exercising a discretion in

respect of the time limit, a judge should always consider at least the following factors, though other factors might also be relevant:

12.1. the employer's explanation as to why an extension of time is required;
12.2. the balance of prejudice;
12.3. the merits of the defence.

13. Commenting on these factors, the EAT's opinion was:
13.1. the more serious the delay, the more important it is that the employer provide a satisfactory and honest explanation. A judge does not have to accept the explanation given. A judge is entitled to form a view as to the merits of the explanation.
13.2. In relation to the balance of prejudice, it is necessary to consider whether the employer, if its request for an extension of time were to be refused, would suffer greater prejudice than the Claimant would suffer if the extension of time were to be granted.
13.3. In relation to the merits of the defence, the Employment Appeal Tribunal suggested that if the employer's defence is shown to have some merit in it, justice will often favour the granting of an extension of time, or else the employer might be held liable for a wrong which it had not committed.

14. No matter how serious the failure of the Respondent, and no matter how inadequate its explanation, it is an error of law for a judge to fail to consider the other factors as well as part of the overall decision.

15. The analysis of the balance of prejudice is likely to be affected by whether a judgment has been issued and, if so, when. The fact that an extension of time, if granted, would have the effect of depriving the Claimant of a judgment is a relevant factor; judgments are intended to be final. However, it is not a decisive factor. In an appropriate case, an extension of time should still be granted, provided that proper weight has been given to the prejudice caused to the Claimant.

The application

16. On 15 July 2025, the Claimant made an application for reconsideration. It did not comply with the procedural requirement that it be copied to the other side. In principle, I might have been willing to waive that breach, and that particular breach plays no part in my decision.

17. Since the judgment was sent on 20 June 2025, the 14 day deadline to apply for reconsideration expired on 3 July 2025. Thus, the application was 12 days out of time. It was submitted after almost twice the time limit.

18. No explanation for the delay has been given.

19. It is more proportionate for me to decide first whether there are "no reasonable prospects of success". If there are "no reasonable prospects of success" in any event, then it follows that it would not be appropriate to extend time (whereas, if the merits appeared to be that the application had greater than "no reasonable prospects of success" the time limit point would still need to be decided).

20. The Claimant presented a claim against a respondent against which (as far as I know) there had been no early conciliation. Certainly no early conciliation certificate number matching this respondent was mentioned in the claim form, or since.

21. Early conciliation certificate number R237321/24/36 was cited in box 2.3 of claim form. That referred to a different respondent to the one in Box 2.1 of claim form. The respondent named in the early conciliation certificate seems to be a company which is in compulsory liquidation.

22. On 5 November 2024, a Notice of Claim letter was sent to the named respondent, who did not reply.

23. On 21 May 2024, a detailed letter was sent to the Claimant explaining why the claim might be struck out, and giving her until 4 June to reply, including offering her the opportunity to state her case if her argument was that the actual intended respondent had been the company named on early conciliation certificate (and also stated as the Claimant's place of work in box 2.4).

24. There was no reply to that letter. The Claimant's 15 July application acknowledges that she received it. The Claimant asserts that she did not reply to the letter because she telephone and was told there was no need to reply to it. There is no record of such a call on HMCTS systems, and there would be no reason for a member of staff to have said that to the Claimant. Furthermore, on the Claimant's case, having been given that information (on an unspecified date, by an unnamed person) she then received the strike out judgment but did not react to it for 26 days.

25. There is no reasonable prospect that the Claimant would be able to demonstrate that the decision to strike out had been procedurally unfair (based on an argument about misleading information having been given by phone).

26. Furthermore and in any event, the 15 July letter still does not address the potential grounds for strike out as set out in the 21 May letter. The Claimant simply suggests that she would need more time to reply to the 21 May letter, but without saying why more time is needed.

27. For the reasons stated above, having considered the application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Approved by:

Employment Judge Quill

Date: 22 July 2025

JUDGMENT SENT TO THE PARTIES ON

31 July 2025

.....
FOR THE TRIBUNAL OFFICE