



EMPLOYMENT TRIBUNALS

Claimant:
Nesrin Habib

v

Respondent:
Leightons Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION OF RECONSIDERATION

In exercise of powers contained in Rule 68 of the Employment Tribunals Rules of Procedure 2024 (“**Rules**”), the claimant’s application of 30 April 2025 to reconsider the reconsideration Judgment dated 22 April 2025 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant did not succeed in her complaints of **unfair dismissal, direct race discrimination, and harassment related to race.**

Principles of Reconsideration

2. When approaching any application, and during the course of proceedings, the Tribunal must give effect to the overriding objective found at *Rule 3 Employment Tribunals Rules of Procedure 2024*. This says:

“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

3. The power to confirm, vary or revoke a judgment is found at Rule 68. That provides that a Judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration albeit almost identical to the one sent in March 2025 by the claimant was made in 14 days of the written reasons having been sent to the parties.
4. By rule 68, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
5. Rule 70 (1) and (2) of the Rules provides:

"A Tribunal must consider any application made under rule 69. 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 shall be refused, and the Tribunal shall inform the parties of the refusal. ..."
6. Where an Employment Judge refuses an application following the application of Rule 70 (2), then it is not necessary to hear the application at a hearing.
7. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be guarded against (*Outasight VB Limited v Brown* [2014] UKEAT/0253/14).
8. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board* [1975] ICR936, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also

said it was unjust to give the loser in litigation a “*second bite of the cherry*” where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

9. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (*Ladd v Marshall [1954] EWCA Civ 1*):

9.1. the evidence could not have been obtained with reasonable diligence for use at the trial;

9.2. the evidence would probably have an important influence on the result of the case; and

9.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

10. The claimant has made two earlier almost identical applications for reconsideration in this matter. The first of the oral judgment and the second of the written reasons. She now advances almost identical issues in a third application for reconsideration of the reconsideration judgment dated 22 April 2025.

11. **Unfortunately, due to the number of reconsideration applications this claimant has made which appear the same on the face of it, this reconsideration of the reconsideration Judgment was not forwarded to the Judge until 28 July 2025. Hence the delay in providing this Judgment for which I apologise.**

12. It is of great concern the claimant is repeatedly making the same points which have already been addressed in the previous applications. The claimant is reminded the Tribunal may under Rule 74 of the ET Rules of Procedure 2024 make a costs order against a party of its own volition where appropriate. The claimant is utilising significant Tribunal resource and time in bringing almost identical repeated reconsideration applications.

13. I will not repeat what has been stated in my earlier Judgments wherein full reasons were provided.

14. The purpose of reconsideration is not to re litigate or attempt to the persuade the Judge that different findings should have been made. Reasons for the decision have been given.

15. The Judge is satisfied there was no procedural irregularity which resulted in the claimant not receiving a fair trial. It is not unusual for video hearings requiring representatives having to take instructions from their client via text message and this is no different to a party passing a note to their legal representative in the course of an in person hearing which would also be permitted. No messaging

between counsel or witnesses was taking place during any evidence being given by the respondent's witnesses. It is not entirely clear why the claimant thinks the legal representative should not have been able to take instructions from their client during the course of a hearing. There was nothing to investigate. Notably nothing was raised by the claimant during the hearing about any now alleged impropriety.

16. Both parties were required to stick to a timetable insofar as evidence and submissions were concerned. This is in line with the overriding objective and to ensure the hearing was concluded in the allocated time. Neither party's submissions needed to be lengthy. The Judge had heard the evidence and made her findings and applied the relevant legal framework to arrive at her decision.
17. Insofar as the application raises complaints which were not part of her claim to be decided at the final hearing, I will not be addressing those matters the claimant now raises.

Decision on the reconsideration application

18. In my Judgment, the claimant is now seeking to have yet another bite of the cherry by repeatedly raising matters in relation to her claims again which could have been raised during her evidence and /or her cross examination of the respondent's witnesses. In the alternative she raises matters which are not relevant to her claims nor the issues she agreed at the outset of the final hearing were correct.
19. Further it is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, especially where evidence being referred to has already been considered and deliberated on. It is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the respondent is able to make to the Employment Appeal Tribunal.
20. In view of the above determination of this application, the original judgment still stands.
21. The application for a reconsideration of the reconsideration Judgment is refused.

Employment Judge N Wilson
Dated: 11 August 2025