Case No: 6014962/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr C O'Hara-Lee

Respondent: Medical Warehouse Limited

JUDGMENT

The judgment of the Tribunal is as follows:

The respondent's application dated 15th July 2025 for reconsideration of the judgment with reasons dated 12 March 2025 (following a final hearing on 24 February 2025) is refused.

REASONS

1. I have undertaken preliminary consideration of the respondent's application for reconsideration of the judgment set out above.

The Law

2. The ability to reconsider a judgment is set out at Part 12 of the Employment Tribunal Procedure Rules 2024 ("the Rules").

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final.

4. The test, as set out in Rule 68 is whether it is 'necessary in the interests of justice' to reconsider the judgment.

5. Rule 69 provides, so far as is relevant, that any application for reconsideration should be made within 14 days of the date when the written reasons were sent. The judgment with reasons in this case was sent on 2 July 2025 and therefore I accept that this application is made in time.

6. Rule 70(2) of the Rules provides that if the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked the application must be refused and the parties informed.

7. The importance of finality in decision making was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 in where Elias LJ said that:

"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

8. Similarly in Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the EAT - Simler P - said at paragraph 34 that:

"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 by 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."

The Application

9. The respondent's application is set out over 6 pages. I have considered the application with care and address the arguments advanced below. In essence they concern two aspects: 1) the quantum of the sum awarded; and 2) the conduct of the hearing on 24 February 2025 in respect of a potential offer of settlement which was made.

1 - The sum awarded is said to be incorrect.

10. It is said that at the hearing there was an "*an unaddressed central argument; that being that Conan was not owed 10 months' salary as in his claim, but was owed 6 months' salary plus Redundancy as agreed".* Attention is drawn to evidence set out within the reconsideration application and an email exchange between the respondent and the claimant, which it is said there was no opportunity to submit in evidence prior to or at the hearing. It is said that the evidence now sought to be given and the email exchange establishes that the claimant was no longer employed as from April 2024 onwards. The respondent asserts that at the hearing "*I attempted to suggest that Conan was owed 6 months' salary plus Redundancy, rather than 10 months' salary as claimed, and to introduce Conan's said email of the 17th of April 2024*."

11. At section 5 of ET1 claim form the claimant had completed that he was employed by the respondent between 8 July 2005 and the 27 August 2024 as a General Manager. At section 8.2 of the claim form the claimant set out that he had not been paid any salary from October of 2023 up until he left the company i.e. on the date set out above. At the hearing on 24th February 2025 the claimant confirmed these details in oral evidence.

12. Section 4.1 of the ET3 response form asks 'Are the dates of employment given by the claimant correct?' the answer 'Yes' has been completed by the respondent. Within section 6.1 of the form it is recorded that the respondent does not defend the claim. A narrative is then given about efforts made to secure finance for the company and efforts to pay the claimant but no issue is raised about the detail of the claim brought. In particular no dispute in respect the period of employment, or the sum said to be due to the claimant, is raised.

13. Between the submission of the response and the date of the hearing no material was submitted by the respondent as being relevant to the claim nor any issue identified with the detail of the claim. Not all claims within the Employment Tribunal have a preliminary or case management hearing and none was held in this case which was set for final hearing on 24th February 2025.

14. At the hearing on 24th February 2025, after the claimant had confirmed the dates of his employment, the details of his claim and explained his calculation of the sum he was owed, the respondent was given a full opportunity to respond. The respondent was able to present such argument and material as it wished to rely upon. Ms Lee on behalf of the respondent made representations about the difficulties the company had encountered, the significant and ongoing efforts to try to secure finance, the emotional strain which had been placed on all by the financial difficulties and set out how a personal relationship existed between Ms Lee and the claimant and how she had tried to work with the claimant to keep him informed through this period.

15. I have no record or memory of any issue being raised on behalf of the respondent at the hearing in relation to the period of the claimant's employment. I have no record or memory of it ever being suggested at the hearing that the figure claimed was disputed, indeed my firm recollection is that there was an acceptance that the sum should be paid. Further there was no reference to the claimant and respondent having agreed any different basis to the claim beyond that which had

been set out in the claim form (and at the hearing) and acknowledged in the ET3 response (and at the hearing).

16. Given that the two central elements of the claim concerned: 1) whether an unlawful deduction had occurred and 2) if it had what the quantum of that was, I am entirely confident that if, as the respondent acknowledges, there had been a 'central argument' that the sum due was not as claimed then this would have formed a significant component of the hearing. Such a dispute would clearly in this case have required judicial determination. The representations made at the hearing on behalf of the respondent did not cause such a determination to have to be made.

17. I must consider however whether it is necessary 'in the interests of justice' to reconsider the judgment with regards to the 'central argument' sought to be relied upon now. I am satisfied that it is not necessary to do so. 1) The evidence sought to be adduced and the emails now relied upon were available to the respondent prior to the hearing and could have been clearly referred to or submitted as evidence, they were not; 2) the fact that there is said to be a dispute concerning the claimant's dates of employment could and should have been identified in the ET3 response submitted, it was not 3) in any event the material sought to be advanced and the terms of the emails submitted are not in my judgment of the weight the respondent suggests. They are clearly part of informal correspondence between the parties. The emails occur at a time when efforts, which were anticipated to be effective, were ongoing to secure further finance. The emails clearly indicate that they are 'back of a napkin workings'. The phrase in the emails 'I am in no position to continue without being paid this month' is not the same as a clear formal termination of the employment contract and does not establish that claimant ceased employment in April 2024.

18. I remind myself in line with the authorities above that finality is an important concept. Here the claimant had clearly set out the dates of his employment both within the ET1 and at the hearing. The respondent accepted the dates of

employment in their written response and raised no substantive argument at the hearing. I am satisfied that in the all the circumstances it is not necessary in the interests of justice to reconsider the judgment given in relation to this argument advanced for reconsideration.

Settlement offer

19. The respondent further submits that the tribunal should have postponed the hearing of the claim to allow the claimant time to consider an offer of settlement which the respondent wished to make.

20. The respondent sets out how, as the tribunal was due to commence, it set about trying to make an offer of settlement to the claimant. The respondent notes that an error exists within the written judgment with reasons which has been issued. It is recorded in the judgment that the claimant stated at the hearing that '*he had received an offer*', when in fact the claimant and respondent now agree that the claimant said '*he had not yet received the offer*' from the respondent but he was aware one was ready to be made.

21. The respondent acknowledges that at the outset of the hearing the claimant made clear that he wished the hearing to proceed that day. The respondent further acknowledges that later in the hearing the respondent re-iterated that it wished to make a settlement offer and that I asked the claimant if he wished time to consider the offer. As the respondent accepts the claimant was adamant that he did not want to consider the offer and wanted the hearing to proceed.

22. The respondent highlights that, in their view, the claimant appeared to suggest that the purported offer was 'contrived or untrue' by the response made to the offer at the hearing. If that was the impression conveyed then certainly the tribunal was always of the view that a genuine offer existed. The central issue remained however that the claimant did not want time to consider the offer. The respondent acknowledges that it never asked for the hearing to be postponed and it was the

clear position of the claimant that he did not want time to consider the offer but wanted the hearing to proceed that day.

23. I have seen attached to the application for re-consideration an email from the claimant who again confirms that he did not ask for the hearing to be postponed and he further confirms, as he did at the hearing on 24 February 2025, that he wanted the hearing to proceed and states he "wanted a conclusion brought to the matter as soon as possible".

24. In respect of this argument advanced in the application 1) for the avoidance of any doubt the tribunal was never concerned at the 'genuineness' of any offer and understood a considered offer had been prepared; 2) Any difference between the claimant having said words to the effect 'he had not yet received' as opposed to having said 'he had received an offer' as recorded in the judgment makes no material difference to the progress of the hearing, given that the claimant was entirely clear he did not want the hearing postponed and wanted the matter resolved that day. Further the difference could have no impact at all upon the substance of the claim which was pursed by the claimant at the hearing.

25. Having therefore considered all the points made by the respondent in the application I apply Tribunal Rule 70(2). I am satisfied on the material presented that there is no reasonable prospect of the original decision being varied or revoked. There is no necessity to reconsider the judgment in the interests of justice.

26. The application for reconsideration is refused.

Employment Judge Richter
8 August 2025

Judgment sent to the parties on
11 August 2025

Note
Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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