EMPLOYMENT TRIBUNALS

Claimant: Jana Jones

Respondent: Swindon Borough Council

Before: Employment Judge Hastie

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application dated 14 May 2025 for reconsideration of the Judgment sent to the parties on 26 June 2025 is refused.

REASONS

1. A communication from the Claimant was received by the Tribunal on 14 May 2025 by means of the ET portal. The Claimant seeks reconsideration of the Judgment arising from the hearing of 12 and 13 May 2025.

2. A reserved judgment and reasons was sent to the parties on 26 June 2025. The Claimants claim for constructive unfair dismissal was dismissed.

3. Reconsideration applications are governed by The Employment Tribunal Procedure Rules 2024.

4. Rule 68 provides that the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is

necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

5. Rule 69 provides that an application for reconsideration must be made within 14 days of the date on which the decision or, if later, the written reasons were sent to the parties.

6. Rule 70 provides the process by which the Tribunal considers an application for reconsideration. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing.

7. The importance of finality in litigation was confirmed by the Court of Appeal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16**. Simler P said that:

"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.*

35. 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."

8. Unusually, the Claimant's application for reconsideration was received the day after the full merits hearing concluded, and before the reserved judgment and reasons were issued on 26 June 2025. The Claimant made her application for reconsideration six weeks prior to the reserved judgment being sent. I consider that the application was made in time. I therefore consider it under Rule 70.

9. I have kept in mind the overriding objective in Rule 3 that cases must be dealt with fairly and justly. This includes, as far as practicable, ensuring the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just process.

The application for reconsideration

10. In summary, the basis of the Claimants application for reconsideration is as follows,

    a. *The Claimant did not appreciate the implications of not proceeding with an application to bring a whistleblowing claim.*
    b. *The Tribunal did not approve the Claimants original amendment application as it had not been copied to the Respondent but the Tribunal copied it to the Respondent and directed a response by 27 January 2025.*
    c. *The Respondent failed to comply with the direction to respond by 27 January 2025. The whistleblowing element was therefore not fully addressed, leaving the Claimant at a disadvantage.*

d. *The Respondent failed to comply with Tribunal deadlines throughout the proceedings.*
e. *The Respondent included confidential correspondence in the hearing bundle without the Claimant's consent.*
f. *The Respondent withheld crucial evidence.*

11. The Claimant asks the Tribunal to reconsider,

a) The decision to proceed without the whistleblowing claim,

b) Reinstating the whistleblowing claim for full consideration,

c) In the light of the Respondents asserted repeated failures to respond to the amended claim as instructed, meet Tribunal deadlines, respect correspondence marked as confidential, and comply with disclosure obligations, consider whether this conduct constitutes unreasonable behaviour under Rule 76 of the Employment Tribunal Rules of Procedure 2013,

d) In the event that the Tribunal agrees that there has been unreasonable behaviour by the Respondent, the Claimant seeks costs in respect of additional time, resources, and disadvantage caused by the Respondent's conduct.

12. The whistleblowing issue that the Claimant raises in her reconsideration application was raised at the hearing of 12 and 13 May and is detailed in the reserved reasons sent to the parties on 26 June 2025. I summarise it below. I note that the Claimant does not raise the disability discrimination issue in her reconsideration application so I do not address it here, although the issues are the same.

a)The decision to proceed without the whistleblowing claim.

13. The Claimant's ET1 was presented on 4 June 2024. Six months later, in December 2024, the Claimant contacted the Tribunal to apply to amend her claim to add claims for disability discrimination and public interest detriment (whistleblowing). The Claimant did not at any time copy the Respondent in to her application in accordance with the rules of procedure. The Tribunal notified the Claimant that the application was currently refused as this had not been done. The Tribunal directed a response by 27 January 2025. There was no response from either party. The Claimant took no further action.

14. At the start of the hearing on 12 May 2025, the Judge raised with the Claimant that the only claim listed for hearing on 12 and 13 May 2025 was the constructive unfair dismissal. The Judge explained to the Claimant that any additional claim would necessitate applications to amend and to extend the time limit for bringing a claim. Further, the bringing of additional claims would result in an adjournment of the full merits hearing of 12 and 13 May 2025.

15. The Claimant confirmed that she had had sufficient time to consider her position. The Claimant did not seek further explanation or additional time to consider her position, or to take advice. The Claimant confirmed that she wished to proceed with the claim for constructive unfair dismissal only. The Claimant said, "I am not bringing any other claims". The Claimant was content to proceed with the claim for constructive unfair dismissal only. The Claimant was in person and asserts that she misunderstood the legal implications. The Judge had explained the position to the Claimant. It is clear that if a claim is not brought, then there is no issue as to remedy.

16. There was no decision by the Tribunal in relation to the whistleblowing claim. Whistleblowing was raised by the Claimant in December 2024. The

Tribunal did not order a departure from the rule that where a party sends a communication to the Tribunal it must send a copy to all other parties, and state that it has done so. (The Employment Tribunal Procedure Rules 2024 rule 90). On 12 May 2025, the Claimant confirmed that she was not pursuing additional claims other than constructive unfair dismissal. The decision not to proceed with the application to amend to bring a whistleblowing claim was the Claimant's decision, made after confirming that she had had sufficient time to consider her position. It was not a decision made by the Tribunal.

b) Reinstating the whistleblowing claim for full consideration.

17. As stated, the whistleblowing was a claim the Claimant sought to bring prior to the 12 and 13 May 2025. It was first raised with the Tribunal in December 2024. Nothing further was done by the Claimant in relation to it until 12 May 2025. The claim required an application to amend to bring an additional claim, and to extend the relevant time limits. The initial opportunity for the application to amend to bring a whistleblowing claim to be pursued, was prior to 27 January 2025 when the Claimant was required by the rules to copy her correspondence to the Respondent. Subsequently, the time for the Claimant to apply to bring a whistleblowing claim was prior to or at the hearing of 12 and 13 May 2025. The Claimant confirmed at the hearing that she did not want to pursue any claim other than the constructive unfair dismissal. Again, the Claimant was in person and asserts that she misunderstood the legal implications. The Judge had explained the position to the Claimant. It is clear that if a claim is not brought, then there can be no issue as to remedy.

c)In the light of the Respondents asserted repeated failures to respond to the amended claim as instructed, meet Tribunal deadlines, respect correspondence marked as confidential, and comply with disclosure

obligations, consider whether this conduct constitutes unreasonable behaviour under Rule 76 of the Employment Tribunal Rules of Procedure 2013, and,

d) the event that the Tribunal agrees that there has been unreasonable behaviour by the Respondent, the Claimant seeks costs in respect of additional time, resources, and disadvantage caused by the Respondent's conduct.

18. I deal with these two issues together. The Claimant raises whether the Respondent has engaged in unreasonable behaviour. The relevant rule is rule 74 of The Employment Tribunal Procedure Rules 2024. The Claimant does not provide the specifics of what she alleges. It was the Claimant who was obliged by the rules to send a copy of her correspondence to the Respondent. She did not do so, even when this was referenced by the Tribunal. The Respondent confirmed at the hearing that it was unaware of December correspondence from the Tribunal. In any event, the Claimant had not sent the correspondence to the Respondent. It is not clear what deadlines or disclosure obligations the Claimant asserts were missed or not complied with by the Respondent. It is not specified what crucial evidence the Claimant asserts the Respondent withheld. These were not pursued as relevant issues at the hearing. There was a document in the bundle that was marked as confidential. This was an email between the Claimant and her union. It was asserted by the Respondent that there was nothing confidential or privileged in the document. Marking a document confidential does not necessarily protect it from future disclosure. In any event, the document was not found to be of any evidential weight in the Judgment and did not prejudice the Claimant in anyway. On the information provided, the Respondent cannot be said to have in anyway conducted the proceedings unreasonably, and any issue as to costs does not arise.

19. The application for reconsideration was made prior to the parties receiving the reserved judgment. Some of the issues raised by the Claimant in her reconsideration application are addressed in the reserved reasons. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The Claimant's application does not identify any new matters.

20. I have kept in mind the decision in **Outasight v VB Brown 2015 ICR D 11**. In this case it was confirmed that Employment Tribunals have a broad discretion in determination of reconsideration applications. It was stated that discretion must be exercised judicially: "*which means having regard not only to the interests of the party seeking the review or 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".*

21. Accordingly, I refuse the application for reconsideration pursuant to Rule 70(2) because there is no reasonable prospect of the Judgment being varied or revoked.

Approved by:

Employment Judge Hastie
Date: 23 July 2025

Sent to Parties on
15 August 2025

Jade Lobb
For the Tribunal Office