EMPLOYMENT TRIBUNALS

Claimant: Miss M Kalina

Respondent: Digitas LBI Limited

RECONSIDERATION JUDGMENT

1. The Claimant's request for a reconsideration of my decision of 4 July 2025 to dismiss her claim is refused.

REASONS

Background

2. At the conclusion of the three day final hearing on 4 July 2025 I gave a judgment dismissing the claim. Written reasons were requested and these were prepared on 6 August 2025. The Claimant made a reconsideration request on 11 August 2025. This reconsideration request has been made alongside the submission of an appeal to the EAT. I am satisfied that a valid application for reconsideration has been requested.

3. The reconsideration is made by way of reference to the grounds of appeal but in essence the claimant requests reconsideration on the following broad grounds:

    3.1 That my decision to dismiss the claim was perverse and contained errors of law.
    3.2 That I failed to engage with her pleaded case, instead substituting a mischaracterised version of her arguments.
    3.3 That I failed to give adequate reasons.
    3.4 That there were procedural irregularities and/or unfairness in the conduct of proceedings, compounded by a lack of appropriate assistance to the Claimant as an unrepresented litigant.
    3.5 That there was apparent bias in the Tribunal's approach, giving rise to a reasonable perception of pre-judgments and unequal treatment of the parties.

4. In relation to the first three points above, I am of the view that these amount to nothing more than a disagreement with my decision. I am satisfied that adequate

reasons were given and that I made my decision on the case that was presented to me, including the way that it was characterised in the Claimant's closing submissions. I find that there are no reasonable prospects of the decision being varied or set aside on these bases.

5. In relation to point four, the irregularities and lack of assistance. I am of the view that I gave the claimant sufficient support during the final hearing. At times I was concerned that I was pushing the boundaries of how much support a judge should be giving a party by helping her to rephrase questions and ensuring that witnesses answered the questions put. I remind the claimant that it is not for the Tribunal to give legal advice to parties, nor are we able to advise on litigation strategy. Whilst we do give support to unrepresented parties, that support is necessarily limited in order to preserve impartiality on the bench. I find that there are no reasonable prospects of the decision be varied or set aside for lack of support from the Tribunal to an unrepresented litigant.

6. The procedural irregularities identified in the request for reconsideration email are:

    6.1 Refusing to consolidate the liability and remedy hearing. This decision was made purely because it was a late application, the respondent had prepared on the basis that we were dealing with liability only and it would be procedurally unfair to increase the scope of the hearing at that moment in time. The balance of prejudice clearly lay in favour of retaining the status quo. Furthermore, I was of the view that there would not be time to deal with liability in the listing window, although I indicated a willingness to reconsider the point towards the end of the hearing if it looked like we were making quicker progress than anticipated. As it turns out, we would not have had time to deal with remedy, although as the claims were dismissed this was a moot point in any event. There are no reasonable prospects of the decision being varied or set aside on this basis.

    6.2 Pre-judgment on remedy value before evidence. I take this to be a reference to a comment made by Judge Kelly at a preliminary hearing to the "extensive" nature of the schedule of loss. There was further reference to the valuation of the claim in the claimant's application for travel costs where different judge commented that the costs were likely to be disproportionate to any award. These instances were, I find, not a prejudging of the value, but an indication that it appeared that the claimant may have been over valuing her claim. But it was no more than an initial indication based on the information available at that time. In any event whether or not a different judge took a view on the value of the claim is irrelevant to my decision which is subject to the reconsideration request. There are no prospects of the decision being varied or set aside on this basis.

    6.3 Reliance on the Respondent's consent in evidential rulings. I did not refuse to admit the evidence until the Respondent had consented to it. But I did need to ascertain their position on the admission of late evidence as a basic procedural fairness. When there is a question about whether a document should be admitted into evidence late it is standard practice to enquire whether the other party consents to it. This saves the need for legal arguments and rulings on satellite points. It is not a procedural failing

to ask a party what their position is on a legal point. There are no reasonable prospects of the decision being varied or set aside on this point.

6.4 Allowance of repetitive cross-examination that consumed time to the detriment of remedy consolidation. I accept that at times questions were put to the claimant repeatedly. But she was evasive with her answers and it was necessary to allow Mr Green to try and get an answer to the question he was asking rather than the question the Claimant wanted him to ask. I did, when I felt that we were not going to get anywhere on a point, tell Mr Green to move on and save the point for submissions. Likewise, the claimant's cross-examination was far from succinct and involved significant repetition. I afforded her the same courtesy as I did Mr Green, particularly when she was questioning Mr Arris, who was also evasive. Likewise, I did need to warn her about repetition. In her appeal grounds she also complains that she was asked about things in her witness statement. I find that there is nothing wrong with counsel checking is understanding of what the claimant has stated in writing, and using her written evidence to provide context for further questions. At stated above, it was highly unlikely that we would have ever been able to deal with remedy in the hearing considering the short listing and, in any event, there was no need to deal with it as I dismissed the claim. Therefore, any impact on time scales was academic at best. I find that there are no reasonable prospects of the decision being varied or set aside on this point.

7. In relation to the bias point, any prejudging upon which the claimant relies comes from different judges dealing with preliminary matters. I took no view on the value of the claim when dealing with liability. The claimant also refers to unequal treatment of parties but I am satisfied that she has failed to set out any adequate reasons she says she was treated unequally. Her complaint really sems to be that I did not treat the parties more unequally as she wanted me to provide her with even more assistance than I could. I find that there are no reasonable prospects of the decision being varied or set aside on this point.

8. Having found that the complaints raised, by themselves, do not give a reasonable likelihood of the order being varied or revoked, I have then considered whether the cumulative effect of them alters that assessment. I find that it does not. I therefore refuse the application for the decision to be reconsidered.

Employment Judge D Wright
22 August 2025