# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Kaloudi Tsikni

**Respondents:** Mr M Kontis (1)
Alphakon Limited (2)

# ORDER

**Made pursuant to the Employment Tribunal Procedure Rule 2024**

1. The respondents' reconsideration application is refused for the following reasons.

**Relevant legal principles**

2. By rule 68 a tribunal may "reconsider any judgment where it is necessary in the interest of justice to do so" and upon reconsideration the decision may be confirmed, varied or revoked.

3. Under rule 69 an application for reconsideration shall be made within 14 days of the judgment being sent to the parties.

4. Rule 70 provides that the tribunal must consider an application to reconsider made under rule 69, and the tribunal considers that there is no reasonable prospect of the judgment being varied or revoked, the application must be refused.

5. Under the antecedent 2004 Rules, prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a decision was wrongly made as a result of an administrative error, a party did not receive notice of the hearing, the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. In *Outasight VB Ltd v Brown UKEAT/0253/14* the EAT confirmed that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

6. The Court of Appeal in *Ministry of Justice v Burton* [2016] EWCA Civ 714 has since provided the following guidance on the approach to be taken by a tribunal when exercising its discretion under rule 70 on the ground of 'interests of justice': (1) the discretion must be exercised in a principled way; (2) there must be an emphasis on the desirability of finality, which militates against the decision being exercised too readily; (3) it is unlikely to be

exercised because a particular argument was not advanced properly; and (4) is also unlikely to be exercised if to do so would involve introducing fresh evidence, unless the strict rules on admissibility are satisfied i.e. whether the evidence could have been obtained with reasonable diligence for use at the hearing, it is relevant and would probably have had an important influence on the hearing, and it is apparently credible (see *Outasight*; *Ladd v Marshall* [1954] 3 All ER 745).

7. The importance of finality in litigation was also emphasised by Simler P (as she then was) in *Liddington v 2Gether NHS Foundation Trust* EAT/0002/16, at paragraph 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 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

8. The focus of the respondents' application is the part of the judgment in which we upheld six of the seven allegations of sexual harassment brought by the claimant. The application discloses no basis for revoking this judgment. It is, in essence, an attempt to relitigate or to reargue matters that have already been litigated.

9. The entirety of the respondents' application has been considered, although the following points are addressed below.

   (1) The claimant's application to amend the claim. The respondents complain that by granting the claimant's late application to introduce three additional allegations of sexual harassment, they were denied a fair opportunity to prepare. As set out in our judgment (Judgment, paragraph 6), we took account that the claimant made this application at a late stage of the proceedings, on the second day of the hearing (30 October 2024), and, materially, we also took account of the respondents' concession that neither the new facts advanced by the claimant nor the timing of the application would result in any practical difficulty in responding to these allegations. In fact, owing to difficulties securing the services of a Greek interpreter, the time taken on this application and other procedural matters, and the additional time required to hear all the evidence, we sat for multiple days between late October 2024 and mid-February 2025 which meant the parties had significantly more time to prepare; with Mr Kontis giving evidence on the sixth and eighth days of the hearing (on 22 January and 12 February 2025).

(2) The claimant's evidence. The respondents make several complaints about the claimant's documentary and oral evidence. Firstly, there is a complaint that the claimant introduced new evidence during cross-examination and when making closing submissions. I recall that on several occasions, the claimant was warned that this was not permissible and that we would not treat this as evidence and nor did we. Secondly, there is a complaint about the claimant's use of ChatGPT and alleged misuse of AI-Generated content. We were cognisant that the Claimant had relied on AI tools to generate her witness statement and gave consideration to this in weighing the evidence we considered and heard. In respect of the claimant's allegations of harassment, we recalled the claimant so that she could give oral evidence in Greek which was then translated into English by the Greek interpreter and we also considered Mr Kontis' own translations. Overall, we were satisfied that the respondents had ample opportunity to fully interrogate and test the claimant's evidence. Thirdly, there is a complaint about the claimant's alleged manipulation of the narrative. The respondents made submissions about this which we considered during our deliberations.

(3) Failure to consider evidence. This concerns several screenshots of Viber messages in Greek and a text message in English which the claimant disclosed. Taking them in the order in which they have been raised, the respondents have cited two Viber messages and a deletion on page 386 of the hearing bundle, a text message on page 293, two Viber messages on page 388 and one on 368. The messages on page 386 were dated 26 April 2023. The respondents complain that we did not consider all of this evidence and that we failed to order the claimant to disclose all Viber messages, including any deleted entries. The respondents also make submissions about the effect of this evidence, and on the claimant's alleged selection of the Viber messages, on her credibility. The claimant was taken by Ms Richards in cross-examination to the English translations of the Viber entries on page 386. Ms Richards did not question the claimant in relation to the deletion after the entry at 09:42 on page 386 or the English translations of the two entries timed 08:46 and 08:49 on page 388) or the Greek entries which the respondents have cited in their application. Nor did the respondents submit, during the hearing, that the claimant had curated or selected only parts of her Viber messages, only that she had failed to disclose them all at the same time. On 2 December 2024, Ms Richards, the respondents' representative, requested disclosure of all Viber messages dated 26 April 2023 which the claimant disclosed the following day. No further application for specific disclosure was made by the respondents. The respondents were represented throughout the hearing. They had the opportunity to put the evidence which was in the bundle (in English and Greek) to the claimant. It would not be in the interests of justice to permit the respondents to rely on evidence which was in the bundle and which their representative did not take the opportunity to cross-examine the claimant on, or to make new submissions about the claimant's selection of the evidence which were not put to the claimant at the time or to repeat or reargue submissions in relation to the claimant's credibility in relation to the evidence we did consider.

(4) Bias. The respondents have referred to a comment I allegedly made that "We are here because you broke the law". Although I do not have a note of what I said, I do recall that having heard the evidence and closing submissions, Mr Kontis was given the opportunity to address the tribunal directly in relation to his concerns about the way in which the claimant had conducted her case and the impact this had had on the final hearing; and I made the observation that the claimant had brought proceedings in which the respondents had since conceded that they had breached the claimant's legal rights i.e. in respect of her right to wages and reimbursement of some of the expenses she claimed. Whilst we understood the respondents' frustration with the fact that the final hearing had become protracted and was fragmented, and gave the respondents a full opportunity to ventilate their complaints about the claimant's conduct, I felt that it was important not to lose sight of the fact that in respect of some of the complaints the claimant had brought, and in particular that part of the claim which the respondents maintained was at the heart of the dispute between the parties, the respondents had accepted that they had breached the claimant's legal rights. My comment solely concerned the part of the claim in respect of which the respondents had conceded liability. I was, at the time, and having reflected on this, remain, satisfied that a fair-minded and informed observer, having considered the facts, would not conclude that there was a real possibility that I nor the tribunal was biased.

10. The remainder of the application concerns challenges to our findings on the credibility and reliability of the evidence given by the claimant and the first respondent, the weight we gave to the evidence we heard and our application of the law, as well as other points which disclose no basis for revoking the relevant part of our judgment.

11. Finally, I would like to apologise to the parties for the delay in promulgating this decision. As the parties have already been informed, the respondents' application was not forwarded to me until 31 July 2025 and having updated the parties on 1 September 2025, further time was needed to confer with the other members of the tribunal.

**Employment Judge Khan**

**17.09.2025**

Sent to the parties on:

19 September 2025

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For the Tribunal:

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