EMPLOYMENT TRIBUNALS

Claimant: Mr J Botcherby

Respondent: Ooshh Studio Ltd

JUDGMENT

The claimant's application dated **10 March 2025** for reconsideration of the judgment, sent to the parties on **28 February 2025** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 68-70 of the Tribunal Rules provides as follows:

70. Principles
(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.
(2) A judgment under reconsideration may be confirmed, varied or revoked.
(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion..

69. Application for reconsideration
Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
(b) the date that the written reasons were sent, if these were sent separately..

70.— Process for reconsideration
(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).
(2) 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 must be refused and the Tribunal must inform the parties of the refusal.
(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.
(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written

representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.
(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 70(2) requires the judge to dismiss an application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 70.

3. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

4. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

5. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

6. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the 2013 revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Earlier versions of the rules had included specific examples of potential grounds for reconsideration; the omission of those specific examples did not mean that those things were no longer possible routes to reconsideration; an application relying on any of those arguments can still be made in reliance on the "interests of justice" ground.

7. Previous appellate decisions (even under earlier versions of the Rules) can

provide helpful guidance to a judge, but they are not intended as a checklist. The individual circumstances of the particular application have to be considered on their own merits.

8. It is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

9. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis: [2023] EAT 40

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

The application

10. On **7 September 2025**, at 8.06pm, the Claimant sent an email to the Tribunal which was not copied to the Respondent. Correspondence sent to the Tribunal has to be copied to the other side. When the party does not have an email address for the other side, they can still email the Tribunal provided they say in the email that they will – and actually do – send a copy of the email by post to the other party.

11. The email asked "*Can I get an update on this?*". In context, the email is asserting that the Claimant previously sent an email to the Tribunal on 10 March 2025 at 3.23pm, and is still awaiting a response.

12. The Tribunal file does not actually contain a copy of the 10 March email as originally sent (only the version that was part of the trail sent on 7 September 2025). However, my finding of fact is that the Claimant did actually send the 10 March email. The 7 September email was referred to me on 22 September 2025.

13. Nothing on the face of the 7 September email demonstrates that the 10 March email was sent to the Respondent. If the application for reconsideration otherwise had merit, then I would have to decide whether to waive the requirement that it be sent to the other party. However, subject to that, the 10 March email was a valid application for reconsideration which was submitted in side the time limit.

14. However, the application raises no new matter that was not already considered by me, and does not cause me to believe that my earlier decision was wrong.

15. Furthermore, my decision that the wages properly payable were £2083.33 was a decision on a point of law – the correct interpretation of the relevant contract. As per Ebury, even if I did form the opinion that my interpretation might have been wrong (and that is not my opinion) then a more appropriate route to challenge the decision might have been an appeal to the Employment Appeal Tribunal. (It is a matter for the Claimant and the Employment Appeal Tribunal – not me – to decide whether it is now too late to appeal to that court).

16. For the reasons stated above, having considered the application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Approved by: **Employment Judge Quill**

Date: 22 September 2025

JUDGMENT SENT TO THE PARTIES ON

24 September 2025

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FOR THE TRIBUNAL OFFICE