EMPLOYMENT TRIBUNALS

Claimant: Isaac Powell Taitt

v

Respondent: M Power Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 68 of the Employment Tribunals Rules of Procedure 2024 (**"Rules"**), the claimant's application of 24 June 2025 to reconsider the Judgment dated 9 June 2025 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant withdrew his complaint of victimisation at the preliminary hearing before EJ Wilson which took place on 12 May 2025. A Judgment dismissing that complaint upon withdrawal was made (dated 9 June 2025).

2. Following that hearing the claimant made an application for reconsideration of the Judgment dismissing the claim of victimisation.

3. The application was received either before or after a period of annual leave and another preliminary hearing had been listed in the meantime to determine other applications to amend the claimant had made. That hearing took place before EJ Evans on 27 and 28 August 2025. EJ Wilson therefore informed the parties the Judge at the preliminary hearing in August would decide whether to deal with the reconsideration application or refer it back to EJ Wilson given the claimant had not been able to articulate any victimisation complaint at the preliminary hearing which took place on 12 May 2025. EJ Wilson at the same time asked for some clarification of the victimisation complaint (given the application made by email dated 24 June 2025 remained unclear). EJ Evans obtained information as set out in the Order dated 28 August 2025. The determination of the reconsideration application was then left to me to determine as the Judge who issued the judgment dismissing the victimisation complaint.

Principles of Reconsideration

4. When approaching any application, and during the course of proceedings, the Tribunal must give effect to the overriding objective found at *Rule 3 Employment Tribunals Rules of Procedure 2024*. This says:

> *"2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*
>
> > *(a) ensuring that the parties are on an equal footing;*
> > *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
> > *(c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
> > *(d) avoiding delay, so far as compatible with proper consideration of the issues; and*
> > *(e) saving expense.*
>
> *A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."*

5. The power to confirm, vary or revoke a judgment is found at *Rule 68*. That provides that a Judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration was made in 14 days of the Judgment having been sent to the parties.

6. By rule 68, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.

7. Rule 70 (1) and (2) of the Rules provides:

> *"A Tribunal must consider any application made under rule 69. 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 shall be refused, and the Tribunal shall inform the parties of the refusal. …"*

8. Where an Employment Judge refuses an application following the application of Rule 70 (2), then it is not necessary to hear the application at a hearing.

9. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which must be guarded against (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

10. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board [1975] ICR936*, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also said it was unjust to give the loser in litigation a *"second bite of the cherry"* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

11. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (*Ladd v Marshall [1954] EWCA Civ 1*):

    11.1. the evidence could not have been obtained with reasonable diligence for use at the trial;

    11.2. the evidence would probably have an important influence on the result of the case; and

    11.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

12. The claimant has made an application to reconsider the Judgment of EJ Wilson dated 9 June 2025 dismissing his victimisation complaint which was dismissed upon withdrawal of that complaint at the case management hearing which took place on 12 May 2025.

13. The claimant's email application for reconsideration states:

    I would like to reconsider withdrawing my claim for victimisation because I sent an email on 24.12.25 to the deputy manager prior to being suspended stating that my documents had been lost and the breach of confidentiality by HR in telling the manager the name of my medication.

    Luigi stated after this email that "I could bring God to the meeting but I would still be suspended".

    I believe due to this email giving the impression I was going to formally "take action against the company" for the lost document directly led to being terminated, which would be victimisation.

I believe the creation of a check list also is evidence of this as it was made to discredit me.

Given the above I would like to formally request a reconsideration of the judgement to dismiss and re-enter the claim based upon new evidence.

14. The acts that are protected by the victimisation provisions are set out in S.27(2) of the Equality Act 2010 (EqA). They are:

- bringing proceedings under the EqA — S.27(2)(a)
- giving evidence or information in connection with proceedings under the EqA — S.27(2)(b)
- doing any other thing for the purposes of or in connection with the EqA — S.27(2)(c)
- making an allegation (whether or not express) that A or another person has contravened the EqA — S.27(2)(d).

15. The allegation relating to the breach of confidentiality in relation the the claimant's medical records is not a protected act which falls within these provisions. Further it is not new evidence as it is already contained within the claimant's ET1 which I had seen at the time of the preliminary hearing. The claimant's ET1 refers to the failure to appropriately store data and the inappropriate use of the claimant's sensitive data (not a standalone cause of action which this Tribunal has jurisdiction to determine). I explained at the hearing what could constitute a protected act in accordance with the legal framework, and the claimant was unable to identify for me any protected act which was contained in his ET1. Furthermore, had he been able to articulate a protected act which was not contained in the ET1 I would have informed him he needed to make an amendment application to include it. However, he was unable to explain any protected act which could form the basis of the victimisation complaint. I gave him time to consider what he was saying he did which could constitute a relevant protected act and he was still unable to do so. It is notable he has similarly failed to do so in his ET1.

16. In relation to the email he relies on from Luigi in the reconsideration application I note the claimant has not disclosed that email. I take note of the clarification he has provided to EJ Evans (as recorded in the CMO dated 28 August 2025). The claimant said the decision to dismiss was because of a complaint he made in an email of 17 November 2023. However, his ET1 makes no reference to any such protected act nor this email. It is notable the written application for reconsideration is also different to this explanation provided to EJ Evans in that the written application sets out that it was after the email about the documents being lost and the breach of confidentiality that Luigi sent an email saying '*I could bring God to the meeting but I would still be suspended".* The reasons the claimant gives in his reconsideration application are the same; namely he asserts that *'I believe due to this email giving the impression I was going to formally "take action against the company" for the lost document directly led to being terminated, which would be victimisation.* Essentially in his written application for reconsideration of the

dismissal Judgment he maintains the protected act is his email about the lost document/breach of confidentiality. This is not a protected act as set out in Section 27 of the Equality Act 2010 as referred to above.

17. His explanation to EJ Evans seeks to add something about an email dated 17 November saying he was uncomfortable with the language that was used in the workplace, but he does not refer to this in his ET1 and nor notably did he raise that at the preliminary hearing on 12 May 2025. In fact, at the preliminary hearing the claimant said he did not make any complaints to the respondent about the Equality Act being contravened.

18. The claimant has now had 3 opportunities to articulate a relevant protected act for the purpose of any victimisation complaint. First, at the time of issuing his ET1, the second at the preliminary hearing where he withdrew the complaint and again at the time he made the application to reconsider the Judgment dismissing the victimisation complaint. I do not find there is new evidence from which I can reasonably identify a relevant protected act. The explanation provided to EJ Evans seems to be an attempt to change the claimant's earlier position. It also does not form the basis of his reconsideration application. The application relies on the same disclosure of documents/data breach allegations asserted in the ET1.

19. The Judgment dismissing the victimisation complaint was issued because the claimant made a clear and unequivocal withdrawal of the complaint having been given the opportunity to articulate the protected act and after I gave due consideration to what was pleaded in his ET1. His application does not add to the matter insofar as it does not raise nor provide new evidence and further seeks to rely on something as the protected act which does not comply with the relevant provisions of Section 27 of the Equality Act 2010.

20. The reference to the 'creation of a checklist' is ambiguous and cannot be properly understood. In any event again there is no articulated protected act in this regard which I can reasonably conclude amounts to relevant protected act.

21. I do not find it is in the interest of justice to set aside the Dismissal Judgment. Nor do I find the claimant has reasonable prospects of the original decision being varied or revoked.

Decision on the reconsideration application

22. In my judgment, the claimant is now seeking to have yet another bite of the cherry in trying to identify a protected act. The wording of his reconsideration application clearly continues to rely on the same matters already contained in his ET1 which were not able to be articulated as a relevant protected act at the hearing where he withdrew the complaint resulting in the dismissal Judgment. There is no evidence disclosed to support his attempted different explanation to EJ Evans in support of the reconsideration application. It is quite clear this explanation nor asserted protected act was not in his contemplation either when he issued his ET1 nor at

the preliminary hearing nor when he made the reconsideration application. I have seen no new evidence to satisfy me the original Judgment should be set aside.

23. In view of the above determination of this application, the original judgment still stands.

24. The application for a reconsideration of the dismissal Judgment dated 9 June 2025 is refused.

Employment Judge N Wilson
Dated: **23 September 2025**

Sent to the parties on:
25 September 2025
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For the Tribunal Office:

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