EMPLOYMENT TRIBUNALS

Claimant: Mr Adelanwa

Respondent: Environment Agency

Heard at: London South (by video) **On:** 3 October 2025

Before: Employment Judge Evans
Mr W Dixon
Ms J Jerram

REPRESENTATION:
Claimant: In person
Respondent: Mr Morgan, solicitor

JUDGMENT

1. The Tribunal refuses the claimant's invitation for it to exercise its discretion under Rule 68(1) to reconsider on its own initiative its judgment on liability ("the Judgment") sent to the parties on 27 May 2025.

2. If the claimant's invitation should in fact be construed as an application under Rule 69, the Tribunal refuses to extend time for it to be considered pursuant to Rule 5(7) and the application is therefore refused.

3. If we had not refused any reconsideration application by the claimant on the ground that it was made out of time, we would have refused it under Rule 70(2) on the ground that it had no reasonable prospect of success.

REASONS

1. The claimant requested written reasons at the end of the hearing on 3 October 2025. These are those reasons.

Introduction

2. By way of background, the Judgment was sent to the parties on 27 May 2025. As such any application for a reconsideration by the claimant should have been made no later than the 10 June 2025 (Rule 69). However we accept the claimant's point that the Tribunal is not bound by the time limit contained in Rule 69 if it decides to exercise is discretion to reconsider a judgment on its own initiative.

3. It is worth noting at this point that the view of the claimant that the Tribunal should reconsider the Judgment amounts to a significant change of heart, given what he said when he sent an email to the Tribunal on 30 May 2025. Of course, the claimant is not in any legal sense bound by what he wrote on that date, but it is nevertheless worth noting what he wrote because of the light in which it now casts his wish for the Tribunal to reconsider the Judgment. He wrote:

> *The Claimant writes to inform the Tribunal that he will not be making an application for Reconsideration and will not be submitting an Appeal to the judgement.*
>
> *Acknowledging the judgement, the Claimant is left melancholy; however, the judgement's well detailed conclusions enable him to now clearly understands why his claim was not successful at the full Hearing, in points of UK Employment Law.*
>
> *Therefore, the Claimant accepts the judgement as Finality in his Claim.*
>
> *The Claimant also acknowledges that the full Hearing proceeding was balanced and fair, achieving the Overriding Objective.*
>
> *The Claimant wishes to once again say thank-you to the Tribunal and Respondent.*

The Law

4. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (Rule 68).

5. Rule 70(2) requires the refusal of an application for reconsideration based on a preliminary consideration if there is no reasonable prospect of the original judgment being varied or revoked.

6. In Ebury Partners UK Limited v Acton Davis [2023] EAT 40, having set out what is now Rule 68, HHJ Shanks summed up the Tribunal's power to reconsider a judgment as follows:

> *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. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.*

7. The interests of justice must be considered not only from the point of view of the party seeking the reconsideration, but also from the point of view of the party resisting it. The Court of Appeal put matters as follows in Phipps v Priory Education Services Ltd [2023] EWCA Civ 652 at [36]:

> *An application for reconsideration under [Rule 68] must include a weighing of the injustice to the Applicant if reconsideration is refused against the injustice to the Respondent if it is granted, also giving weight to the public interest in the finality of litigation.*

8. In Ministry of Justice v Burton [2016] ICR 1128 Elias LJ, stated that the discretion to act in the interests of justice is not open-ended and emphasised the importance of finality, which he said militated against the discretion being exercised too readily (its [21]).

9. In common with all powers under the 2024 Rules, preliminary consideration under Rule 70(2) must be conducted in accordance with the overriding objective which appears in Rule 3, namely, to deal with cases fairly and justly. Achieving finality in litigation is part of a fair and just adjudication.

10. As noted above, there is only one ground on which a judgment can be reconsidered: the interests of justice. However, the factual basis for a successful application for a re-consideration may include (but are not limited to): the decision being wrongly made as a result of an administrative error; a party not receiving notice of the proceedings leading to the judgment; the decision being made in the absence of a party; or new evidence being available since the conclusion of the hearing which the claimant could not reasonably have known about or foreseen at the time of the hearing. That is to say the typical factual basis for a successful application for a reconsideration tends to be that for some reason the claimant has not had a fair opportunity to present their case.

The application

11. Turning to the basis for the claimant inviting us this morning to reconsider the Judgment of our own initiative, in broad terms, what he said was this:

    a. First of all, he explained that we were not bound by the time limits under Rule 69 if we were considering reconsidering the Judgment on our own initiative. The Tribunal accepted this.

    b. Secondly, the claimant focused on the Tribunal's conclusions in relation to his allegation that the dismissal of his grievance was an act of direct race discrimination because the evidence relating to it had not been properly considered either at the first instance or on appeal. He relied on the very recent Employment Appeal Tribunal case of Kokomane v Boots Management Services Limited [2025] EAT 38. The claimant submitted in effect that if that case were applied to the facts of his claim, then it was clear that the respondent had not conducted itself properly. Once it had become aware of allegations of race discrimination on his part, it should have

instructed him, or at least invited him, to complete a new grievance form and then should have dealt with the resulting grievance.

c. Thirdly, the claimant focused on the organogram allegation. The claimant submitted, in effect, that a proper review of the evidence would have led the tribunal to a different conclusion in relation to that issue (and to other issues to which it was related).

Conclusions

12. Turning briefly to the case of Kokomane, it is worth reciting in full the summary at the beginning of the EAT's judgment because the claimant has misunderstood what the case is about. In fact it is about how a Tribunal should decide whether there has been a protected act for the purpose of a claim of victimisation.

> *The ET used too narrow a definition of what could amount to a protected act and did not analyse in sufficient detail the context in which the complaint relied upon as a protected act was made. In particular, part of the context is the way in which the respondent would have understood the complaint. Here, where the employer would know that the claimant was the only black employee and the complaint was specifically about difference in treatment, those were matters that should form part of the evidential consideration. It was not clear that in dealing with the claimant's grievance and appeal hearings the ET approached that evidence with that contextual approach in mind.*

13. Kokomane is not relevant to the complaint in relation to which the claimant was unsuccessful concerning his grievance.

14. Turning first to the question of whether we accept the claimant's invitation to reconsider the Judgment on our own initiative, we would only wish to accept such an invitation if we were satisfied that it was in the interests of justice for us to revisit it.

15. What the claimant is in effect submitting is that (1) we did not direct ourselves properly about the law (his Kokomane point) and/or (2) that we reached the wrong factual conclusions. He does not point to evidence which is now available which was not previously available so the second point is really a perversity appeal dressed up as a reconsideration application.

16. We conclude that neither of these points give rise to an argument that has any reasonable prospect if allowed to progress further of resulting in the Judgment being varied or revoked. The Kokomane point is based on the claimant's failure to understand what that case is about. The more general point simply amounts to the claimant arguing that we should have reached different conclusions on the evidence before us. That is therefore our principal reason for refusing the claimant's invitation to us. Neither point is, it seems to us, remotely arguable.

17. Further, if those were matters which the claimant wished to pursue, the correct venue to pursue them would have been the Employment Appeal Tribunal because they both relate to an alleged error of law.

18. In so far as the claimant has himself made an application for the Judgment to be reconsidered, as we have explained, firstly, we would not exercise our discretion to extend time to consider the application because the claimant has not put forward any sensible reason why we should do so. Secondly, and further and separately, if we had decided to extend time, we would have concluded that the application should be refused under Rule 70(2) because it had no reasonable prospect of success. We would have reached that conclusion for the same reasons that we have just given for declining the claimant's invitation to reconsider the Judgment on our own initiative.

19. Overall, we conclude that the reality is that the claimant is seeking a second bite of the cherry and nothing more.

Approved by:

Employment Judge Evans

6 October 2025

Sent to Parties.
10 October 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.