EMPLOYMENT TRIBUNALS

Claimant: Wendy Rose Davis

Respondent: (1) Wren Davis Limited
(2) Virginia Anne Deradour
(3) James Victor Wren Davis

JUDGMENT ON RECONSIDERATION

Rules 68-71 of the Employment Tribunal Rules of Procedure 2024

Upon the Respondents' application, made on 4 September 2025, to reconsider the costs judgment sent to the parties on 22 August 2025 under Rule 68 of the Employment Tribunal Procedure Rules 2024, and without a hearing, the application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

REASONS

Introduction

1. On 8 August 2025, I upheld the Claimant's application for costs and awarded the Claimant costs in the amount of £2,400. The judgment was sent to the parties on 22 August 2025. In the judgment, I recorded that I had been informed that the Respondents had not submitted a response to the Claimant's application for costs.

2. On 4 September 2025, the Respondents applied for the costs judgment to be reconsidered on the basis that the Respondents had in fact submitted a response to the Claimant's application for costs ahead of the deadline. A copy of the submissions was provided with the application for reconsideration.

3. The submissions reiterated an argument made previously by counsel for the Respondents, whereby he appeared to seek to argue that the Respondents had in fact submitted a Response on the prescribed form within 28 days, and that the Tribunal had failed to issue a notice of rejection.

4. In the submissions, counsel for the Respondents set out that the bundle for the preliminary hearing had been produced by the Claimant's solicitor without consulting the Respondents and that was why documents were missing. It was argued the Tribunal would not have been able to make case management orders at the hearing on 18 June 2024 because there was the issue of the extension of time to be decided.

5. The submissions set out that the Respondent had no view on whether the application for costs should be decided on the papers or at a hearing.

The relevant Rules and case law

6. Rules 68 to 71 of the Employment Tribunals Rules of Procedure 2024, set out the procedure for tribunals to reconsider judgments:

Principles

68. - (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.

Application for reconsideration

69. 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.

Process for reconsideration

70. - (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.

The interests of justice

7. Under Rule 68(1), a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. A Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' as per Rule 3.

8. In *Outasight VB Ltd v Brown* [2015] ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, 'which means having regard not only to the interests of the party seeking the review or 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'.

9. In *Stevenson v Golden Wonder Ltd* [1977] IRLR 474, EAT, Lord McDonald said (regarding review provisions under an earlier version of the rules) that they were 'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'.

10. In *Trimble v Supertravel Ltd* [1982] ICR 440, EAT, Browne-Wilkinson P stated, "If the matter has been ventilated and properly argued [at the original hearing] then errors of law of that kind fall to be corrected by this appeal tribunal'. The EAT in that case emphasised that the reconsideration procedure is there so that where there has been an oversight or 'some procedural occurrence' such that a party can be said not to have had a fair opportunity to present their argument on a point of substance, they can bring the matter back before the tribunal for adjudication.

11. In *Ebury Partners UK Ltd v Acton Davis* [2023] IRLR 486, EAT, the EAT noted that while it may be appropriate to reconsider a decision where there has been a procedural mishap meaning that a party has been denied a fair and proper opportunity to put his or her case, reconsideration should not be used to correct a supposed error made by the tribunal after the parties have had such an opportunity. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.

The Reconsideration procedure

12. Rule 70 of the Tribunal Rules 2024 sets out the procedure that an employment tribunal will follow upon receipt of an application for reconsideration.

13. Under Rule 70(2), if the tribunal considers that there is no reasonable prospect of the original decision being varied or revoked, the application will be refused, and the tribunal will inform the parties accordingly.

14. In *Shaw v Intellectual Property Office* UKEAT/0186/20 (9 July 2021, unreported) HHJ Auerbach described this as the 'sift' stage of the reconsideration application, akin to the sift process which is applied to appeals to the EAT. If on this sift it is held that there is no such reasonable prospect, the application will be refused, and the tribunal will inform the parties accordingly. But if the application crosses this threshold, the second stage is a hearing to determine the application, unless a hearing is not necessary in the interests of justice.

15. In *TH White & Sons Limited v Ms K White* UKEAT/0022/21 (26 March 2021, unreported), it was held that it will be an error of law to skip the first stage and move straight to the second stage.

Conclusion

The 'sift' stage – Rule 70 (2)

16. The Respondents' application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

17. I accept this is the type of case where it may have been appropriate to have reconsidered my decision. I reached the decision to award the Claimant costs on 8 August 2025 believing the Respondents had not submitted a response to the Claimant's costs application, when in fact they had. However, now that I have seen and read the Respondent's submissions, I have concluded even if I had been aware of those submissions, I would have still reached the same conclusion.

18. The decision to award costs was based on the Respondent's unreasonable conduct in two respects. I found that the Respondents acted unreasonably in failing to make an application to extend time before 23 April 2024 and acted unreasonably in failing to adequately prepare for the hearing on 18 June 2024, by ensuring all the relevant documents were in the bundle for the hearing.

19. The failure to make an application to extend time prior to 23 April 2024 is not addressed at all in the Respondents' submissions. Instead, the Respondents' counsel erroneously continued to argue that they had in fact submitted a Response in time. The only relevant point made in the submissions in respect of the failure to adequately prepare for the hearing on 18 June 2024 was that the Claimant's solicitor had produced the bundle for the preliminary hearing

without the Respondents input. That does not explain why the Respondents had not adequately prepared for the hearing themselves. They had not produced a bundle. It was not suggested they sought to liaise with the Claimant's solicitor about what should be in the bundle. It was the Respondents application. The majority of the hearing time was wasted obtaining documents from the Respondents, which were crucial for *their application* to extend time.

20. On this basis, I have concluded that even if I had received the submissions sent in by the Respondents, I would have still reached the same decision regarding the Claimant's application for costs. Therefore, it is not in the interests of justice to reconsider the judgment. There is no reasonable prospect of the judgment being revoked or varied and therefore the Respondents' application for reconsideration is refused.

21. In reaching this decision, I have had regard to the Claimant's interests and the public interest requirement that there should, so far as possible, be finality of litigation.

Approved by:

Employment Judge Annand

27 October 2025

JUDGMENT SENT TO THE

PARTIES ON

28 October 2025

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FOR THE TRIBUNAL OFFICE