Case Number: :6021382/2025

EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr C Perlstrom	v	**Soar Community**

Before: Employment Judge JM Wade (in chambers)

JUDGMENT

1 The claimant's application dated 23 August 2025 for reconsideration of a Judgment sent to the parties on 15 August 2025 is refused, for the reasons set out below.

REASONS

Introduction

1. I conducted a final hearing in the above case on 14 August 2025. The case concerned the claimant's central allegation that he was entitled to be paid at the top of the pay scale for his post in perpetuity, because that had previously been the case and had become an implied term by reason of custom and practice.
2. I gave an extemporary judgment with reasons the same day. The judgment, sent to the parties the next day, said this:

JUDGMENT

1. The claimant's complaint of unlawful deductions from wages is not well founded.
2. No award arises pursuant to Section 38 of the Employment Act 2002.
3. The Tribunal makes no declarations pursuant to Section 11 of the Employment Rights Act 1996.
4. The claimant's application for a preparation time order is dismissed.

Employment Judge JM Wade

15 August 2025

Judgment sent to the parties on:

15 August 2025

For the Tribunal: [xxx]

Note: The reasons for the decisions above were explained to the parties at the hearing. Decisions and written reasons are published on the Tribunal's website shortly after they are made available to the parties. Any request for written reasons must be copied to the other party and received by the Tribunal within 14 days of this Judgment being sent.

3. The claimant presented a written application for reconsideration, copied to the respondent on 23 August 2025, and he wrote (not copied to the respondent) on 6 November 2025 enquiring about his application and confirming he had no wish or desire for a further hearing and considered the matter could be addressed on documentation alone.

4. The application was referred to me on 28 August 2025, but was overlooked by me and the parties must have my apology for that, and for the consequent delay in this decision being made.

The Law

5. Rules 68 and 70 of the Employment Tribunal Procedure Rules 2024 provide as follows:

> ***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.*
>
> ***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.

6. I therefore address this application at the first stage, effectively a "sift" before calling for the respondent's comments. The claimant's application made three broad points:
   6.1. He considers the "custom and practice" argument that he was always to be paid at the top of the relevant pay scale was not given proper and sufficient consideration;
   6.2. There is new evidence since the hearing which, had it been before the Tribunal would have supported that argument, specifically, that the claimant was first paid at SP7 – the then highest point on the pay scale - from 1 November 2018 (he commenced employment in 2017). He also contends that the absence from the hearing of Ms Whittaker, who had the requisite knowledge, was unfair to him; and
   6.3. He considers the contract given to him in 2022 is not "valid" and therefore does not meet Section 4(1) of the Employment Rights Act 1996 until signed by the respondent.

Consideration and Decision

7. This was a contested hearing, with oral evidence, with appropriate questions to the claimant and the respondent witness on the central issues. It is then clear that my findings and determination of the "custom and practice" argument was the key determination and it was determined against the claimant, applying the test which he has included within his re-consideration application (and which he considers was not given sufficient consideration).

8. The "new evidence" - the longevity of being paid at the top point of the pay scale - was not known for certain during the hearing. I did find the beginning of employment as 2017 - the new evidence confirms SP7 was paid from 2018. The difference between 2017, 2018 and 2022 (when the claimant was provided with a contract which confirmed his salary but contained no such express term) goes to the "notoriety" and "certainty" of the term – potentially. It does not engage at all with whether the contended custom and practice term was reasonable, or "made sense". In that I agreed with the respondent's submission that it did not make sense amongst all other findings I made.

9. Given that the new evidence does not engage with the critical issue, there is no reasonable prospects of me considering it is in the interests of justice to admit the new evidence and there are no reasonable prospects of the decision being revoked or varied because of it; or of me considering the absence of Ms Whittaker is such that it is necessary in the interests of justice to revoke/vary the Judgment.

10. Parties and the interests of justice are not served by re-visiting the custom and practice determination unless I am persuaded that I made an error of law in the application of that test, or it was necessary in the interests of justice for some other reason to do so. I do not consider I made an error of law, and the fact that others may consider a custom and practice term could be implied (having not attended the hearing, heard the evidence, or heard the parties' submissions on it), is not a basis for me to consider there are any prospects of success in that part of the application.

11. As to the Section 4 point, the Employment Rights Act provisions in Section 1 and Section 4 are about the employer giving information about terms and conditions. These matters were ventilated in the hearing and I found that the claimant was provided with the document as a change in May 2022 and he signed his contract in September 2022. The submission that Parliament, when it said "give" in Section 4 meant "give a copy which is signed by the employer", while inventive, strikes me as misconceived when it is clear that Parliament took a great deal of trouble to set out very detailed requirements for employers and had it intended this particular requirement, it would have said so.

12. For the reasons above, there are, in the round, no reasonable prospects of the Judgment being varied or revoked and the application is therefore refused in accordance with Rule 70.

Employment Judge JM Wade

Date 10 November 2025