EMPLOYMENT TRIBUNALS

Claimant: Mr Garyn Price

Respondent: Dijla Limited (t/a Dominos Pizza)

UPON APPLICATION made by the Claimant to reconsider the Judgment sent to the parties on 15 October 2025 ("**Judgment**"), under rule 69 of the Employment Tribunals Rules of Procedure 2024 ("**Rules**").

JUDGMENT

The Claimant's application for reconsideration is refused and the Judgment is confirmed.

REASONS

Background

1. In the Judgment, I concluded that the Claimant's complaints of; direct disability discrimination, discrimination arising from disability, and failure to make reasonable adjustments; all failed, and they were therefore dismissed.

2. The Claimant applied for reconsideration of the Judgment by way of a document submitted on 15 October 2025, about an hour and a quarter after the written Judgment and Reasons was sent to him, setting out eight grounds. Later on the same day, the Claimant submitted a corrected version of his application, noting that the substance had not been altered and that he was simply correcting and clarifying case references. I observe however that, whilst I have not forensically compared the two versions, they appear to be the same. Certainly, the case references are identical.

3. On 16 October 2025, the Claimant then submitted a "Supplemental Addendum" to his reconsideration application, setting out three further points.

Issues and Law

4. The Claimant opened his application by stating that it was made under Rule 70 of the Employment Tribunals Rules of Procedure 2013. However, new procedural rules, The Employment Tribunal Procedure Rules 2024, were introduced on 6 January 2025. The new Rules have not materially altered

the process to be adopted in relation to reconsiderations, but the numbering of the relevant Rules is slightly different. All subsequent references to Rules are to the 2024 Rules.

5. Rule 68 provides that reconsideration of a judgment will take place where the Employment Tribunal considers that it is necessary in the interests of justice to do so.

6. Rule 69 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record of the judgment was sent to the parties, and should set out why reconsideration is necessary. In this case, the Claimant submitted his application within the stipulated time period, and I was satisfied that his explanation of why he considered reconsideration was necessary had been set out.

7. Rule 70(1) notes that the Tribunal must consider any application made under Rule 69, and Rule 70(2) notes that if the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked then the application must be refused, and the Tribunal must inform the parties of the refusal. Alternatively, Rules 70(3) to (5) set out the process that is then to be followed for further consideration of the application.

8. In ***Outasight VB Ltd v Brown*** **2015 ICR D11**, EAT, HHJ Eady QC (as she then was) indicated that the wording "*necessary in the interests of justice*" in Rule 70[1] allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. She confirmed that that 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*".

The Application

9. As I have noted, the Claimant set out eight grounds for his application. They were:

Ground 1 – Failure to Apply the Correct Proportionality Test
Ground 2 – Acceptance of After-the-Fact Legitimate Aims
Ground 3 – Mischaracterisation of Evidence (Procedural Unfairness)
Ground 4 – Occupational Health (Error of Law & Procedural Irregularity)
Ground 5 – Findings Unsupported by Evidence
Ground 6 – Failure to Apply EHRC Code and Access to Work Guidance
Ground 7 – Improper Reliance on Post-Claim Video
Ground 8 – Trial Shift Rejected on Speculation

10. The three points raised in the Claimant'' supplemental addendum were:

1. Recent authority confirming trial periods as reasonable adjustments
2. Findings on speed, theft, and temperature unsupported by evidence

[1] Rule 70 in the previous iteration of the Rules was the same as the current Rule 68.

3. Failure to apply the EHRC Employment Code and Access to Work factors

Conclusions

11. I considered each element of the Claimant's application in turn.

Ground 1

12. The four- stage proportionality test in ***Bank Mellat v H M Treasury (No 2)*** **[2013] UKSC 39**, arose in relation to an appeal about the operation of a closed material procedure and not in the context of section 15 of the Equality Act 2010. As noted in ***Knightley v Chelsea & Westminster NHS Foundation*** **Trust [2022] IRLR 567**, the test for proportionality in section 15 claims will often turn on the third and fourth of those ***Bank Mellat*** questions, i.e. whether a less intrusive measure could have been used, and the overall balance.

13. I dealt with proportionality in paragraphs 83 to 96 of the Judgment. In those paragraphs, I noted the obviously severe impact of the decision not to employ the Claimant on him, and then outlined the impact that permitting the Claimant to undertake the delivery driver role would have had on the Respondent. Within that analysis, I addressed a number of assertions advanced by the Claimant as to ways in which his employment could have been accommodated notwithstanding his disability, i.e. I analysed the less intrusive alternatives that the Claimant had advanced.

14. As the Claimant was not employed, there was not going to be direct evidence about the impact of those alternatives on "speed" and "theft", but those matters were evident from the Claimant's own presentation in his video, and from common sense. With regard to the video, it demonstrated that, whilst the Claimant could, in straightforward circumstances, deliver pizzas, that was clearly only able to be done in a slow manner. With regard to matters of common sense, the leaving of a car door open whilst pizzas were transferred from the Respondent's premises, or the leaving of pizzas on a car bonnet or roof, would both have opened up an obvious scope for opportunistic theft.

15. Overall, I was satisfied that I had applied the proportionality test appropriately.

Ground 2

16. I noted, at paragraph 81 of the Judgment, that the aim advanced by the Respondent in its email to the Claimant confirming that he was not to be offered the role focused on health, safety and welfare elements. It made no reference to customer service, i.e. the second aim advanced by the Respondent during the hearing. I noted there, without referencing the specific appellate cases, that a Respondent is able to advance aims which may not have been at the forefront of its mind at the relevant time.

17. The authorities I had in mind in that regard were first the EAT decision in ***Bolton St Catherine's Academy v O'Brien*** **(UKEAT/0051/15)** where, at paragraph 114, it was noted that, "*Because the test of determining*

proportionality is objective[2], it is no bar to the dismissal being justified objectively that an employer at the time of dismissal did not turn its mind to questions of proportionality. It follows that in order to prove objective justification an employer may rely upon matters that have come to light after the event".

18. Obviously, in this case, we were not looking at dismissal, but the principle applied equally to a refusal to employ. Although the EAT's decision was overturned at the Court of Appeal, that statement of principle was not itself overruled.

19. Other appellate decisions in relation to justification arising in respect of other types of complaints made a similar point, notably ***Health and Safety Executive v Cadman*** **[2005] ICR 1546**, a case dealing with the justification of a material factor defence in an equal pay case, and ***British Airways plc v Starmer [2005]*** **IRLR 863**, an indirect discrimination case.

20. The case of ***Hall v Chief Constable of West Yorkshire Police*** **(UKEAT/0057/15)** referred to by the Claimant, does not appear to relate to the justification of unfavourable treatment, but to whether unfavourable treatment was because of something arising in consequence of the particular Claimant's disability.

21. I saw no reason to reconsider the approach I took in relation to the analysis of the legitimacy of the aims in the Judgment.

Ground 3

22. I did not record the Claimant's remark about "*putting bags on the floor*" as if it were a serious proposal. I only recorded as a finding of fact that the Claimant had referenced putting bags on the floor as an option. The Claimant had initially denied that he had said that, before saying that, if he had, it had been a comment made in jest. I further noted that my finding was that, even if the comment had been meant in jest, it had not been received that way by the recipient of the comment, Mr Masudi.

23. I did not, in any sense, over-emphasise the comment about putting bags on the floor. Indeed, in my conclusions when assessing proportionality at paragraph 93, I focused only, in terms of placing bags on a surface, on them being placed on the bonnet.

24. I did not see that this was in any sense, procedurally, or indeed substantively, unfair.

Ground 4

25. It should be remembered in relation to this aspect, that my conclusions at paragraphs 62 to 64 addressed one of the Claimant's specific assertions of less favourable/unfavourable treatment, namely that the Respondent had speculated about potential risks rather than made an objective assessment which should have been informed by an occupational health report.

[2] Original emphasis

26. I do not consider that my conclusions at paragraphs 62 to 64 were, in any sense, legally flawed. Dealing with the Claimant's four numbered points in this section of his application, I comment as follows.

    1. An employer has no duty to obtain a professional assessment before rejecting an applicant for employment, it only has to take steps to consider reasonable potential adjustments in circumstances where the applicant concerned is disabled.

       As an occupational health report was not obtained, any assessment of the benefit that could have been derived from such a report was always going to be speculative. In my conclusions, I noted that the Claimant had not put forward in his evidence any indication of what additional benefit could have been obtained from an occupational health report. I further observed that it was difficult to see what additional benefit, over and above the adjustments proposed by the Claimant himself, an occupational health report could have provided.

    2. The burden of proof required the Claimant to establish prima facie facts from which, in the absence of a non-discriminatory explanation, discrimination could be inferred. Inherent within that, it seemed to me, was an anticipation that the Claimant, asserting that the Respondent's assessment should have been informed by an occupational health report, would identify what such a report would have been likely to have proposed. That was not, in any sense, a reversal of the burden of proof.

    3. Paragraph 6.33 of the EHRC Code of Practice on Employment sets out a range of steps it might be reasonable for employers to take by way of reasonable adjustments. Eighteen such examples are set out over six pages, but none appear to state that medical or occupational health advice should be sought where the effects of disability are uncertain.

       In any event, as I noted at paragraph 64 of the Judgment, it did not seem to me that the effects of the Claimant's disability were uncertain. Indeed, I noted my findings in respect of the Claimant's abilities at paragraph 30 of the Judgment, where the Claimant's own evidence was that he was not capable of walking long distances and could not carry heavy or large items in both hands. Indeed, I noted there that part of the Claimant's own disability impact statement noted that his condition impacted on him being able to manage more than one item at a time.

    4. This rather ties back to points 1 and 2 above, in that I noted that the Claimant, whether in evidence or submissions, did not advance any particular matter that an occupational health adviser could have recommended. In any event, the issue of lighter bags and a backpack were explored during the course of the hearing, as noted at paragraphs 94 and 95.

27. As I noted at paragraph 64, I did not consider, and do not consider, that occupational health input was required, as the Respondent, in the form of Mr Masudi, was able to observe the impact of the Claimant's condition on his mobility and his ability to carry items, and he was fully aware of the likely demands that the role the Claimant was looking to fulfil would place upon

him.

Ground 5

28. Whilst I recognise, as a general principle, that findings are to be based on evidence, and that reasons for how findings are reached should be expressed adequately, I do not see that the EAT decision in ***Carphone Warehouse Ltd v Peart*** **(UKEAT/0457/13)** provides any direct authority for that.

29. Regardless of that, in relation to paragraphs 103 to 105 of the Judgment, I was not making findings of fact, I was reaching conclusions. In that regard, I was addressing each of the adjustments the Claimant contended should have been made, assessing the reasonableness of them.

30. As we were talking about steps which were not, in fact, taken, the assessment was bound to involve a degree of conjecture. However, that was drawn from the evidence of the Respondent's witnesses, albeit given by way of assertion rather than by way of hard facts, and from common sense observations.

31. As I have noted above, issues such as the theft of a vehicle when the door is left open, or the theft of pizzas from a car bonnet when they are left there unsupervised, would be, I would have thought, self-evident. Similarly, taking pizzas from the Respondent's premises to a car, one by one, would clearly be slower than taking several pizzas in one go, which would have an obvious impact on their temperature.

32. I note in relation to this section of the Claimant's application, that, in my analysis of the adjustments and the reasonableness of implementing them, I did not, as outlined at paragraph 105, accept the Respondent's assertion that there would be a risk of cross-contamination by placing pizza bags on a car bonnet. I did not therefore automatically accept the Respondent's assertions but tested them against my own observations of the Claimant's own evidence and against common sense.

33. I was satisfied that my findings were based on the evidence I read and heard, and that my conclusions were drawn from those findings and from my own, common sense, observations.

Ground 6

34. There is a slight error in the Claimant's application in that the duty to take into account a relevant code, and the EHRC Code of Employment Is one such code, is found in Section 15 of the Equality Act 2006 and not in Section 14. There, Section 15(4)(b) says that a Code shall be taken into account by a Tribunal in any case in which it appears to the Tribunal to be relevant.

35. Iin this case, having outlined, at paragraph 23, the particular matters the Code suggests may be taken into account when considering the reasonableness of any adjustment, I then addressed the particular steps in line with the Code at paragraphs 102 to 109. In that section, the cost of implementing any adjustment did not feature, and therefore the potential for there to have been Access to Work support had no bearing. I do not therefore consider that there was any failure to take into account relevant provisions of the EHRC Code.

Ground 7

36. As I noted in the Judgment, the video was produced by the Claimant to demonstrate how he could have undertaken the work of a delivery driver for the Respondent by using a backpack. It is difficult to see therefore, how reliance on the video can be said to have been improper.

Ground 8

37. Paragraph 87 of the Judgment was part of my analysis of the proportionality of the Respondent's decision not to employ the Claimant by reference to its legitimate aims. In that analysis, I tested the contentions advanced by the Claimant as to matters which might have been taken into account and which might then have led to him being offered employment. One such matter was the operation of a trial shift or period.

38. At paragraph 85, I concluded that the Claimant would have been able to deliver an order to what I described as a "straightforward customer", with little impact on his health and safety, albeit, as I noted at paragraph 89, there would still have been an impact on speed and temperature. However, by contrast, delivering to customers in other than straightforward conditions would have been likely to have posed a risk to the Claimant's safety. I noted, at paragraph 86, that the Claimant appeared to recognise that, to a degree.

39. Again, as no trial shift was worked, any conclusions about the potential efficacy of it were bound to be speculative. However, the evidence, which, as I noted, included the Claimant's own evidence, pointed to there being an obvious risk to the Claimant's welfare and safety, when undertaking deliveries in less than straightforward conditions, involving deliveries of different quantities, to different locations, at different times of the day and night, and in different weather conditions. The point I was addressing at paragraph 87 was that a trial shift, or even a trial period, would not necessarily have adequately tested the range of circumstances which might have been problematic for the Claimant.

40. The case of ***Patel v NewDay Cards PLC*** **(2215364/2023)** is a decision of an Employment Tribunal which is not binding on me. In any event, having quickly reviewed that judgment, and searched for the words "*test*", "*meaningfully*" and "*explore*", it does not appear to have been founded on the conclusion that the employer, in that case, breached the duty to make reasonable adjustments by failing to test or meaningfully explore them.

41. Again, I did not see any basis to reconsider my conclusions in this regard.

42. Turning to the three points made by the Claimant in his supplemental addendum, my observations were as follows.

Point 1

43. The EAT judgment in ***Rentokil Initial UK Ltd v Miller*** **[2024] EAT 37** was not handed down after the Claimant submitted his reconsideration request; it was handed down on 14 March 2024. The Claimant accurately states

however, that the EAT confirmed in ***Miller***, at paragraph 36, that, "*there is no rule or principle of law that a trial period in a new role cannot, in law, be a reasonable adjustment.*".

44. However, the judgment continues, immediately afterwards, to say, "*Conversely, a tribunal is not bound in every case where the employee was facing dismissal, to conclude that the employer ought to have given them a trial period in a particular other role. Whether or not it ought reasonably to have done so is a matter for the appreciation of the tribunal, taking account of all the circumstances, including the suitability of the role, and the prospects of the employee succeeding at the role and passing the trial.*".

45. Again, I have quickly read the judgment in ***Miller***, and it does not appear to have held that an employer should ordinarily try a practical adjustment where it might avoid disadvantage. Indeed, a search for the word "*try*" reveals it was only used once in the judgment in an entirely different context.

46. Consequently, the full analysis set out at paragraph 36 of ***Miller*** does not, in my view, move the Claimant's Ground 8 any further forward. As I have noted from the quotation from ***Miller*** above, whether an employer ought to have offered a trial period is a matter for the appreciation of the tribunal, taking account of all the circumstances, including the suitability of the role and the prospects of the employee succeeding at it. As I noted in my Conclusions, even if the Claimant had, in some sense, "passed" a trial, due to the deliveries being "straightforward", that would not have fully tested the potential issues which would have been likely to have impacted on the Claimant due to his disability.

Point 2

47. This was fully addressed in my comments in relation to Ground 5 above. As I noted there, I was considering, at paragraphs 103 to 108, challenges the Claimant was making to the Respondent's contention that its refusal to employ him was a proportionate means of achieving its legitimate aims. Those were the maintenance of the Claimant's safety and welfare, and the maintenance of high levels of customer service, which included delivery of food at the right time temperature, in the expected timescale, with minimal risk of theft, cross-contamination and damage to reputation.

48. In undertaking that consideration, I took into account the evidence produced by the Claimant himself, in the form of his disability impact statement and his video, and the Claimant's own assertion of the way in which he could have undertaken the role, e.g. by possibly taking pizza boxes one at a time from the Respondent's premises to his car and from his car to the customer location, possibly placing them on the car bonnet whilst doing so. My conclusions about the impact of that on speed, theft and temperature, were matters of common sense assessment, and the lack of supporting documentary evidence did not, in my view, undermine them.

Point 3

49. This simply repeats Ground 6, which I have addressed above.

50. Overall, having reviewed the Judgment in the context of the Claimant's reconsideration application, I did not consider that there was a reasonable prospect of the decision being varied or revoked, and I therefore refused the application.

Authorised for issue by

Employment Judge S Jenkins

20 October 2025

Sent to the parties on:

21 November 2025

For the Tribunal Office:

Katie Dickson