EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002222/2024

Held in Chambers on 23 October 2025

Employment Judge Campbell

Dr M Yousef **Claimant**

Offshore Renewable Energy Catapult **Respondent**

RECONSIDERATION JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Following reconsideration of the tribunal's judgment issued to the parties on 4 August 2025, the tribunal's decision is to confirm that judgment.

REASONS

Introduction

1. By a written application dated 18 August 2025 (the **'application'**) the claimant applied for reconsideration of the tribunal's judgment issued to the parties on 4 August 2025 (the **'judgment'**). The judgment dismissed all complaints he had made, which were of direct discrimination, harassment and victimisation under the Equality Act 2010 (**'EqA'**). unlawful deduction from wages under the Employment Rights Act 1996 (**'ERA'**) and common law breach of contract.

2. Upon initial consideration I did not believe there to be 'no reasonable prospect of the judgment being varied or revoked' in terms of rule 70(2) of the Employment Tribunal Procedure Rules 2024 (the **'procedure rules'**) The issues the claimant raised appeared to require more detailed consideration. I therefore sought submissions from the respondent. It submitted its written grounds of opposition to the application on 9 September 2025.

3. Both parties agreed there need not be a hearing to determine the application. I was similarly content to deal with the application on the basis of written

submissions, particularly as both parties had clearly set out their positions in that way.

Relevant law

1. The mechanism for reconsideration of tribunal judgments is contained in Part 12, rules 68 to 71 of the procedure rules. Whether a party applies for reconsideration or a tribunal decides itself to do so, a judgment can only be reconsidered if *'it is necessary in the interests of justice to do so.'* That is the paramount principle. The result of reconsideration may be that the judgment is confirmed, varied or revoked.

2. In conducting reconsideration, a tribunal should consider the interests of both parties and also the public interest in finality of litigation (in relation to the last of those, ***Ebury Partners Ltd v Acton Davis [2023] EAT 40*** being relevant). A party should not be permitted to use the reconsideration process to reargue their case a second time around, and thus gain a 'second bite of the cherry'.

3. A number of authorities provide clarification and guidance as to when a judgment should be varied or revoked upon reconsideration and when it should not. A principle which emerges is that it is generally appropriate to vary or revoke a previous judgment when there has been a procedural misstep which appears to have had a material influence on the outcome, but not when the parties had a fair opportunity to present their cases and no procedural issues or errors arose – ***Ebury Partners Ltd, Trimble v Supertravel Ltd [1982] ICR 440, Ministry of Justice v Burton and another [2016] EWCA Civ 714***. In those circumstances, the correct process is to submit an appeal to the Employment Appeal Tribunal. I note that the claimant has done that by way of a notice of appeal which was acknowledged and sealed on 15 September 2025.

4. The claimant's application is arranged in numbered paragraphs. The grounds on which reconsideration is sought are within paragraphs numbered 2 to 11. The respondent provided submissions on each, following the same order. They are dealt with in turn below.

5. In **paragraph 2** the claimant says that a particular version of the respondent's 'Total Reward Policy & Procedure' (the **'policy'**) was removed from the joint hearing bundle by the respondent shortly before the hearing began. He says that this suggests the policy 'may have been changed after the fact to justify denying me a bonus'. He does not go as far as to say that the terms of the policy at the relevant time, when applied to him, would have resulted in him being eligible for a bonus. He said that he raised the omission in the hearing but no steps were taken to remedy it. He contrasts this with the respondent

being permitted to add documents to the bundle up until the day before the hearing began.

6. The respondent commented that the policy version the claimant was referring to had been present in the bundle when the hearing started and explained on which pages it could be found. He therefore had the opportunity to give evidence about it and to ask the respondent's witnesses about it in cross-examination.

7. My conclusions are that the version the claimant believes was missing from the bundle was in fact within it, that the parties had the opportunity to refer to it in evidence during the hearing, and that they did so. I noted their evidence and the relevance of that particular version of the policy is considered and explained in the judgment. I recall that the claimant raised during the hearing that he believed a relevant version of the policy was missing, but that this was clarified and accepted not to be the case, in the same way as described by the respondent in its grounds of resistance to the application. The claimant appeared to accept the explanation given and he did not make a request for any orders or other steps to be taken for any other versions of the policy to be added to the bundle. In any event, he does not say that any 'missing' version of the policy, if there had been one, would have made any difference to the respondent's decision not to grant him a bonus. The differences he identified related to eligibility for health insurance and not any bonus. On the question of when the respondent added certain documents to the bundle late, this was an unrelated matter and the claimant was given the opportunity to raise at any point in the hearing that a document was being referred to which he was unprepared to deal with. He did not do so.

8. I am also conscious, and record here, that the issue the claimant raised in this part of his application was that the wording of the policy may have read so as to allow employees who were serving notice of termination of their employment to be eligible for a bonus. This would have brought him into scope as he had served notice himself. As I found in the judgment, whatever the wording in that regard had been at the appropriate time, the point was essentially academic. This was because his claim incorporated three arguments as to why he should have received a bonus. One was that it was an act of direct race discrimination for him not to have been paid one, the second was that the non-payment was an act of victimisation and the third was that he had a contractual right to a bonus. The judgment makes clear why none of those allegations were supported by the evidence. Payment of a bonus to any employee was clearly discretionary as all versions of the policy spelled out, and there had been no unlawful exercise of such discretion against him.

9. In **paragraph 3** of his application the claimant said that there was a lack of evidence to support the respondent's evidence about which changes had been made to the policy and when. He referred to a lack of corroborating evidence of various types. The respondent said that the tribunal was entitled to accept the evidence from the respondent's witnesses. The tribunal had considered both what they had said and also their credibility and reliability. There was no new evidence to consider.

10. In essence, the claimant's point is concerned with the burden of proof which applies in employment tribunals. Findings of fact are made on the balance of probability – or to paraphrase, what is most likely to have happened – based on the evidence brought before them. In the judgment I explained how I had considered and evaluated the three versions of the policy, what evidence provided by the respondent's witnesses had been accepted, and that the claimant had been unable to challenge that (either in cross-examination or by providing contrary evidence of his own). There was adequate evidence before me on which to make the findings which I did given the standard of proof which applied.

11. **Paragraph 4** of the application alleged that I had not followed the correct approach to applying the burden of proof in the direct discrimination complaint under section 136 of EqA. The claimant argues that he had established enough by way of primary facts to shift the burden onto the respondent to show that it had not acted in a discriminatory way. This is a point of law and I note that it has been included in the claimant's appeal. The respondent argued that section 136 had demonstrably been applied correctly in the judgment.

12. The claimant is in my view incorrect to say, as he does, that I was wrong to conclude that he had failed to provide enough evidence to shift the burden. He suggests I should have taken a 'cumulative' approach to that, which overlooks that I found in relation to each of his direct discrimination complaints that at least one necessary factor required by section 13 of EqA was missing. A 'cumulative' approach cannot cure the absence of a valid comparator, for instance, which the claimant was unable to identify.

13. The claimant revisits the question of comparators as well as his harassment complaint in **paragraph 5** of his application. The common theme is that the tribunal acknowledged he had been treated by managers in a way which could be considered detrimental or unfavourable, but that such treatment was not found to be related to the protected characteristic of race which he relied on.

14. As it relates to his direct discrimination complaint this is largely a repetition of his argument in paragraph 4 of his application, which is addressed above. He does not articulate in any clear way how the requirements of section 26 were

improperly applied to the findings made. He points out that it is the effect of a perpetrator's behaviour rather than their intent which is relevant, a point I do not disagree with, and dealt with in the judgment. He does not acknowledge that the legal test for harassment requires that whatever conduct is complained of must be 'related to' a protected characteristic. This is essentially where his claim failed, as there was no evidence to support that finding.

15. The claimant revisits the connection between the treatment he was proven to have received and his protected characteristic in **paragraph 6.** He refers to his harassment complaint but the points he makes also apply to his direct discrimination claim. Again this is a point of law and it is contained in his appeal. He is once more suggesting a more holistic view should have been take of his evidence. Again also, this does not deal with the fact that he was unable to identify a valid comparator – real or hypothetical – who was or would have been less favourably treated than he was, and therefore that his complaint under section 13 could not succeed. In relation to his harassment complaint his submissions repeat arguments he made in the hearing and which were evaluated at that stage. I determined in the judgment that there was no connection between any treatment which provisionally fell within section 26(1)(b) and the protected characteristic of race which he relied on. I see no reason why that analysis was wrong. And there was no procedural mis-step preventing him from having his complaint fairly heard.

16. **Paragraph 7** discussed the issue of whether the claimant had carried out a 'protected act' as defined in section 27 of EqA by raising a grievance. I found that, on the evidence, the grievance was not such an act. Revisiting the findings I made and the basis for this decision I see nothing in the application to persuade me that this was wrong. It was essentially a question of evidence and fact. In an attempt to provide further certainty I explained why, had the grievance been a protected act, I would not have found that the claimant had been detrimentally treated (thus victimised) as a result of it. The detriment alleged was the non-payment of a bonus. There was no evidence whatsoever to suggest a connection between the claimant's grievance and that outcome. This is another academic point.

17. In **paragraph 8** the claimant says that the tribunal acknowledged the respondent's non-compliance with a contractual requirement. This related to the respondent's omission of written confirmation that his probation period was extended. This does not relate to any complaint the tribunal had to decide. It was not found to be a breach of contract. The claimant had no right to have the extension confirmed in writing and it was confirmed verbally, before being revoked on a later date.

18. In **paragraph 9** the claimant challenges the tribunal's finding that a white colleague, Mr Wilson, was not a valid comparator. He had been paid a bonus when the claimant had not. He was found not to be a valid comparator because the circumstances surrounding his receipt of a bonus, particularly the timing of his tendering of notice in relation to final approval of bonus payments, were materially different from those of the claimant. Furthermore, there were at least two other colleagues who were valid comparators, and the claimant was compared to them and found to have been treated in the same way. Nothing the claimant now raises persuades me that my exclusion of Mr Wilson, or inclusion of the other two colleagues, was incorrect.

19. The claimant raises the determination of his complaint of unlawful deduction from wages in **paragraph 10** of his application. He takes issue with the finding I made that he did not have any 'legitimate expectation' of a bonus, although he omits the first of those words. The judgment explained why he had no legitimate expectation, which was because the rules of the scheme explained that no employee under notice would receive one. The claimant appears to be using the word 'expectation' in isolation to express that he personally assumed he would receive a bonus. That was not the sense of the term adopted. It was the respondent which had the power to decide, it set out in the policy the approach it would take, it applied the principles which it said that it would, and it did so consistently across all employees, the claimant included. If he had an expectation of receiving a bonus it was not a legitimate one in that legal sense.

20. **Paragraph 11** deals with a number of matters such as his general credibility – with which I took no issue – and the question of whether there was sufficient evidence to support certain findings which I made. Again, given the standard of proof which applied there was adequate evidence to support those findings. Ultimately, the claimant could not directly challenge the respondent's evidence on the key issues in the claim. He believed that he was the victim of discrimination but the evidence pointed the other way and was not sufficient to help him.

21. For the above reasons, on reconsideration of my decision in light of the parties' submissions I believe it would not be in the interests of justice to change any aspect as requested by the claimant. I am conscious of the importance of finality in judgments, but had there been a reason to review and change any aspect I would have been willing to do so. However, on consideration of the claimant's grounds I see no relevant and material errors in the judgment and therefore it is confirmed and the application is unsuccessful.

Date sent to parties **03 November 2025**