



EMPLOYMENT TRIBUNALS

Claimant: Mr Nsimba Da Silva

Respondent: Extra Personnel Limited

JUDGMENT

The claimant's application dated 26 November 2025 for reconsideration of the judgment sent to the parties on 13 November 2025 is refused.

REASONS

Background

1. The claimant was employed by the respondent, an employment business/agency, as a security officer, from 2 April 2019 until 23 December 2024. Early conciliation started on 23 January 2024 and ended on 29 January 2024. The claimant, on 01 February 2024, presented claims for race discrimination and harassment related to race. The conduct complained of is alleged to have taken place between March and April 2021.
2. By order dated 19 August 2025, a public preliminary hearing was scheduled to take place on 11 November 2025, to consider whether it would just and equitable to extend the time limit for presenting the claim, whether the claim should be struck out because it has no reasonable prospects of success or whether a deposit order should be made.
3. At the hearing on 11 November 2025, the claimant attended the hearing and was supported by lay representative, Ms Fownes. The claimant was also assisted by a Lingala interpreter. The Tribunal spent a considerable amount of time clarifying the complaints and ascertained that the alleged discriminatory conduct was limited to dates between March and April 2021.
4. The claimant confirmed that he was relying on 2 documents as his witness statements, albeit they were not signed or dated. Under oath, the claimant confirmed that the contents were true to the best of his knowledge and belief. Questions were put by the representative for the respondent and Tribunal. Ms Fownes also took this opportunity to explain how she had assisted the claimant after his initial claim to the Employment Tribunal was rejected in November 2021. Subsequently, submissions were heard from Ms Fownes on behalf of the claimant.

5. Upon consideration of the evidence and submissions, an oral judgment giving full reasons was delivered. The Tribunal determined that it was not just and equitable for the time to present the claim to be extended, the application was refused and claims dismissed.

Application for reconsideration

6. On 26 November 2025 the claimant made an application for a reconsideration of the judgment dated 13 November 2025.
7. In his application, the claimant avers that the adjudication is unfair because:
 - a. The claim presented on 01 February 2025 is a new claim and should have been considered afresh
 - b. The complaint in 2021 was rejected and was not dealt with in a reasonable way
 - c. He was unaware of the process
 - d. He did not have funds to instruct a solicitor
 - e. The Tribunal did not hear evidence of the race discrimination complaints
 - f. The hearing was biased in favour of the respondent
 - g. The lay representative was not permitted to ask questions
 - h. He was not permitted to explain details of the conduct complained of when giving evidence

The law

8. Rules 68 to 71 of the Employment Tribunal Procedure Rules 2024 provide as follows:

RECONSIDERATION OF 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.

Reconsideration by the Tribunal on its own initiative

71. Where the Tribunal proposes to reconsider a judgment on its own initiative, it must inform the parties of the reasons why the decision is being reconsidered and the judgment must be reconsidered (as if an application had been made and not refused) in accordance with rule 70(3) to (5) (process for reconsideration).

9. Whilst the discretion under the rules is wide under the 'interests of justice' test, it is not boundless; it must be exercised judicially and with regard, not just to the interests of the party seeking the review, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation (*Flint v Eastern Electricity Board* [1975] ICR 395 at 401, per Phillips J, at 404).

Reasons

10. I have carefully considered the claimant's application and the grounds he sets out for his application, and I have concluded that there is no reasonable prospect of variation or revocation of the original decision.
11. At the preliminary hearing on 11 November 2025, the Tribunal spent time clarifying the claims that were the subject of complaint and ensured that there were no further complaints that the claimant wished to pursue.
12. The application to extend time for the presentation of the claim presented was then considered in the context of the complaints that had been identified. It was not necessary to hear evidence of the discriminatory conduct as this was not an issue that was due to be determined at the preliminary hearing. This was explained to the claimant at the hearing.
13. The claimant gave evidence, under oath, with the assistance of an interpreter and was given a full opportunity to present his application where he addressed his reasons for the delay presenting the claim, what steps he had taken to seek assistance and why he felt the conduct was racially motivated.

14. Ms Fownes, clarified points raised and assisted the claimant after he gave evidence.
15. Thereafter, the respondent's representative made submissions on whether it was just and equitable to extend the time limit followed by Ms Fowens, who made full submissions on behalf of the claimant. Both parties engaged in the proceedings and had a fair opportunity to fully present their case.
16. At the conclusion of the submissions and after taking some time to consider the evidence the Tribunal gave an oral judgment with reasons for the decision. In summary, the application to extend the time limit was refused as the claim form presented on 01 February 2024 was the third attempt to present a valid claim form to the Tribunal, the first having been rejected as the complaint (failing to treat personal data confidentially) was one that the Tribunal did not have jurisdiction over and the second because there was discrepancy between the parties named on the claim form and the ACAS certificate. Nonetheless, neither of the previous 2 claim forms included complaints of race discrimination.
17. The respondent first became aware that the claimant was raising matters of race discrimination in 2024, almost 3 years after the conduct complained of. The claimant claimed that he had raised the matters of race discrimination with the respondent in 2021, however, this was not supported by the contemporaneous emails exchanged between the parties and the formal grievance raised by the claimant. The respondent did not have an opportunity to investigate the complaints now pursued and the complaints, mainly, relate to a person, Mr Hussain, who is no longer an employee. Furthermore, memories are likely to have faded. Based on this it was determined that the respondent is likely to suffer prejudice in defending these claims.
18. In his evidence, the claimant, in relation to one of his complaints, stated that he felt the conduct was racially motivated as his colleague had only behaved in that way towards him. However, this was contradicted by the contemporaneous documentary evidence where the claimant raised a complaint about his colleague's conduct, stating that he behaves this way towards others too. In that written complaint, he did not allege that the conduct was racially discriminatory. Based on this, it was determined that the delay had impacted the claimant's memory too and the cogency of evidence is likely to be affected.
19. Since presenting the claim form in 2021 and the claim form on 01 February 2024 the claimant had sought advice from his lay representative, the Personal Support Unit, the Equality Advisory and Support Service, his MP, the PHSO, a solicitor who told him the claim was out of time, Birmingham People's Centre and ACAS. Based on this, it was determined that the claimant's continued ignorance of the law was not reasonable, particularly after the Tribunal had informed him that it did not have jurisdiction to hear his first claim.
20. The claimant has not demonstrated that my decision contained any error of fact or law. Nor has he shown any vital evidence or matter was overlooked that might have impacted the outcome. Overall, the claimant has not satisfied the stringent test for reconsideration. The arguments made do not establish it is essential for the interests of justice to revisit my earlier refusal of an extension of time. In conclusion, the claimant's request for reconsideration of my earlier judgment is refused. The application does not meet the high legal threshold, and I find there is no reasonable prospect of the judgment being varied or revoked.

Date: 01 December 2025

Approved by

Employment Judge Hussain