EMPLOYMENT TRIBUNALS

Employment Tribunal: **Bristol**

Claimant: **Miss N Frost**

Respondent: **Café Jazz Limited**

Before: **Employment Judge Cuthbert**

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Respondent's application for reconsideration is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Relevant law on reconsideration

1. Under **Rule 68** of the Employment Tribunal Procedure Rules 2024 ("the Rules") a Tribunal may reconsider a judgment where it is **necessary** in the **interests of justice** to do so. On reconsideration, the judgment may be confirmed, varied or revoked.

2. The "interests of justice" provide a Tribunal with a broad discretion to determine whether reconsideration is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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. It is unusual for a litigant to be given a "second bite at the cherry" and the jurisdiction to reconsider should be exercised by employment tribunals with **caution** (see *Outasight VB Ltd v Brown* UKEAT/0253/14 & *Ebury Partners Ltd v Acton Davis* [2023] EAT 40).

3. The procedure following a reconsideration application is for the Employment Judge who heard the case to review the application and determine if there are **any reasonable prospects** of the judgment being varied or revoked (**Rule 70(2)**). Reconsideration cannot be ordered simply because the applicant party disagrees with the judgment.

4. If the Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the Judge shall send a notice to the parties setting a time limit for any response to the application by the other party and seeking the views of the parties on whether the application can be determined without a hearing (**Rule 70**).

5. My role therefore, upon the considering the Respondent's application, based upon the papers initially, is to operate as a filter to determine whether there is a reasonable prospect of my decision being varied or revoked were the application to be further considered at a reconsideration hearing.

Process

6. The Claimant's claim was for £296.82 in unpaid wages. I heard the claim at a public final hearing on 10 October 2025, by CVP video. I gave an oral judgment and upheld the claim and in addition awarded the Claimant two weeks' pay (£587.50) on the basis of the Respondent having failed to provide a written statement of employment particulars.

7. The Respondent requested written reasons and these were provided to the parties by the Tribunal by email on 30 October 2025 **("the Reasons")**.

8. By way of an email also dated 30 October 2025, the Respondent wrote to the Tribunal seeking a reconsideration of the judgment. The application was as follows (I have labelled the various grounds for ease of reference):

> *I write on behalf of the Respondent, Coffee Jazz Limited, to respectfully but firmly request a Reconsideration of the Tribunal's judgment in this case, pursuant to Rule 70 of the Employment Tribunal Rules of Procedure 2013. This request is made on the grounds of serious procedural unfairness, factual inaccuracy, and multiple errors of law, which together have resulted in a judgment that is unsafe, unjust, and clearly inconsistent with the evidence and legal framework.*
>
> *1. Procedural Unfairness – Pregnancy-Related Absence and Denial of Fair Hearing* ***[Ground 1]***
>
> *I did not attend the hearing in person due to pregnancy-related medical appointments and complications which had been fully notified to the Tribunal in advance by email. My representative, Mr C. Kiernan, attended on my behalf and presented my case in full.*
>
> *The Tribunal therefore had full notice of my condition and circumstances under Section 18 of the Equality Act 2010, yet the written reasons state that my evidence was given "very limited weight" solely because I was not personally present. That approach is procedurally unfair and discriminatory in effect. A party should not be penalised for a protected medical absence, especially where a representative is present. The Tribunal ought to have given proper weight to my written statement.*
>
> *2. Failure to Consider Core Evidence from the Respondent* ***[Ground 2]***

The judgment's reasoning shows that the Tribunal dismissed almost the entirety of the Respondent's evidence from myself (Owner), Deputy Manager Ms Dorina Kramos, and Director Mr Vasile Andrusca declaring much of it "irrelevant". This is incorrect. Our statements addressed the central issues: the probationary nature of the engagement; the agreed pay rate of £11.44/hour discussed at interview; the fact that the Claimant worked only eight shifts over two weeks; the CCTV-confirmed periods of idleness; and the reason her probation was not continued. By failing to weigh this evidence, the Tribunal denied the Respondent a fair and balanced assessment.

3. Misapplication of the Law on Written Particulars ***[Ground 3]***

The judgment finds that Coffee Jazz failed to provide a written statement of employment particulars under Section 1 of the Employment Rights Act 1996. However, the Claimant only worked for approximately two weeks (5–20 September 2024). Section 1 ERA 1996 requires a written statement only where employment lasts longer than one month. No such obligation had arisen. The finding is therefore a misapplication of the statute.

4. Misinterpretation of the "Agreed Pay Rate" (Advert ≠ Contract) ***[Ground 4]***

The Tribunal accepted £12.50/hour as the agreed rate solely because that figure appeared in the Indeed job advertisement. This is a fundamental legal and evidential error. A job advertisement is not a binding contractual term; it is an invitation to treat. The binding rate is what was agreed verbally at interview and then accepted in practice. Both I and Ms Kramos stated clearly that the Claimant was offered the minimum wage of £11.44/hour during probation, with a potential review afterwards. The Claimant worked, was paid at that rate, and did not object. By elevating the advert above the actual agreement, the Tribunal reached a perverse conclusion ***[Ground 3]****.*

5. Contradictory Findings on Break Deductions ***[Ground 5]***

The Tribunal accepted that CCTV showed the Claimant standing idle or chatting during working hours, but nevertheless concluded she was entitled to be paid for "all hours worked". This is internally inconsistent. Where a worker takes unauthorised breaks or is not performing duties, the employer may lawfully make deductions that reflect actual productive hours. The finding of "unauthorised deductions" is therefore both factually and legally doubtful.

6. Unlawful Section 38 Award ***[Ground 6]***

The Tribunal awarded two weeks' pay under Section 38 of the Employment Act 2002. That provision only applies if the employee was entitled to a written statement under Section 1 ERA 1996. As the Claimant worked for less than one month, no entitlement arose and the Section 38 award is ultra vires.

7. Cumulative Effect and Imbalance of Credibility ***[Ground 7]***

The cumulative effect of these errors is that the Tribunal preferred the Claimant's assertions simply because she attended in person, while disregarding consistent evidence from three Respondent witnesses and contemporaneous records. This creates the appearance of an imbalance in credibility assessment and an unsafe finding.

Request

For the reasons set out above, the Respondent respectfully asks the Tribunal to:

1. Reconsider and set aside the judgment dated 10 October 2025;

2. Review the findings on pay rate, deductions, and written particulars in light of the correct statutory position and the Respondent's evidence;

3. Remove or revise the Section 38 Employment Act 2002 award as not legally available on the facts;

4. If necessary, list the matter for a fresh hearing before a different Employment Judge.

9. I have considered the reconsideration application as set out below.

Ground 1 – "*Procedural Unfairness – Pregnancy-Related Absence and Denial of Fair Hearing*"

10. The parties were notified of the final hearing on 10 October 2025 by way of a Notice of Hearing dated 17 May 2025, nearly five months before the hearing.

11. On 8 October 2025, the Respondent's representative, Mr Kiernan, had written to the Tribunal as follows:

Please note that Miss Gorea (the Respondent) has a confirmed maternity appointment with her community midwife at 9:00 AM on the same day, as evidenced by the attached appointment confirmation. This is an essential medical appointment related to her pregnancy and cannot be rescheduled.

Under UK law, and specifically the Equality Act 2010 (Sections 17 and 18), individuals are legally protected from any unfavourable treatment related to pregnancy or maternity. Maternity care and attendance at antenatal appointments are recognised as essential medical needs and take legal priority.

Accordingly, Miss Gorea has authorised me, Mr. Christian Kiernan, to attend and represent her at the hearing in her absence. This arrangement arises from medical necessity and not by choice. I am fully authorised to speak on her behalf and act in her best interests during the proceedings.

We respectfully request the Tribunal to confirm that this representation will be accepted and that the hearing may proceed on this basis.

Thank you for your understanding and consideration.

12. Attached to the correspondence was an undated screen print which referred simply to an "appointment" on "10 October 2025".

13. No application to postpone the hearing was made by the Respondent, either before or at the hearing itself.

14. Rule 32 of the 2024 Employment Tribunal Rules states:

> *Postponements*
>
> *32.—(1) An application by a party for a postponement must be received by the Tribunal as soon as possible after the need for a postponement becomes known.*
>
> *(2) In the circumstances listed in paragraph (3) the Tribunal may only order a postponement where—*
>
> > *(a) all other parties consent, and—*
> >
> > > *(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or*
> > >
> > > *(ii) it is otherwise in accordance with the overriding objective,*
> >
> > *(b) the application was necessitated by an act or omission of another party or the Tribunal, or*
> >
> > *(c) there are exceptional circumstances.*
>
> *(3) The circumstances are—*
>
> > *(a) a party makes an application for a postponement less than 7 days before the date on which the hearing begins, or*
> >
> > *(b) the Tribunal has ordered two or more postponements in the same proceedings on the application of the same party and that party makes an application for a further postponement.*
>
> *(4) In this rule—*
>
> *(a) "postponement" means a postponement of a hearing including any adjournment which causes the hearing to be held or continued at a later date;*
>
> *(b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.*

15. Even had a postponement application been made, there was no evidence before the Tribunal which would have amounted to exceptional circumstances. There was no evidence to suggest that the appointment was such that it could not be postponed or rearranged or as to why Mr Gorea could not attend the

Tribunal hearing after the appointment, which was stated to have been at 9am. The hearing started at 10am and was listed for two hours.

16. I am satisfied that the weight given to Ms Gorea's witness statement was appropriate in the circumstances and that Ground 1 discloses no basis for reconsidering the judgment.

Ground 2 – "*Failure to Consider Core Evidence from the Respondent*"

17. The issues in the case were set out at para 7 of the Reasons. Very little of the evidence presented related to those issues. I considered the relevant evidence presented to the Tribunal and made findings upon it (paras 13 – 31 of the Reasons), weighed this up, and drew my conclusions (paras 40 – 41 of the Reasons). This Ground seeks to argue that I should have weighed up the evidence differently and reached different findings – that is not a valid basis for reconsidering the judgment.

Ground 3 – "*Misapplication of the Law on Written Particulars"*

18. This ground asserts an error of law. That assertion appears to be founded upon the law on s.1 statements as it stood **before** 6 April 2020. The law was changed with effect from 6 April 2020.

19. Irrespective of that mistake by the Respondent, an assertion of an error of law by a Tribunal is not a basis for seeking reconsideration of a judgment. Errors of law (had one been made) can only be corrected on appeal.

Ground 4 *- "Misinterpretation of the "Agreed Pay Rate" (Advert ≠ Contract)"*

20. This ground seeks to argue that I should have reached a different conclusion on the pay rate than that which I did from paras 18 and 40.1 of the Reasons. The Respondent disagrees with how I weighed up the evidence presented and my conclusion but that is not a valid basis for reconsidering the judgment.

Ground 5 *– "Contradictory Findings on Break Deductions"*

21. This ground seeks to reargue/reassert the Respondent's case on whether it was entitled to make deductions for what it deemed to be *"unauthorised breaks"*. It ran effectively the same argument at the main hearing and I did not accept it (see paras 21 – 26 of the Reasons). The reconsideration application also refers to CCTV evidence and there was no CCTV evidence adduced to the Tribunal – there was simply one still image of the Claimant in the workplace, stood behind the Café counter.

22. A reconsideration does not give a party a "second bite at the cherry" and Ground 5 discloses no basis for reconsidering the judgment.

Ground 6 – *"Unlawful Section 38 Award"*

23. This Ground is based on the same misunderstanding of the law on the part of the Respondent as Ground 3 and discloses no basis for reconsidering the judgment.

Ground 7 *– "Cumulative Effect and Imbalance of Credibility"*

24. This ground merely sweeps up the various individual grounds, each of which have failed to disclose any basis for reconsidering the judgment. The same applies to Ground 7.

Conclusion on the Respondent's application

25. I have considered the Respondent's application with reference to what occurred at the previous hearing, the outcome of that hearing (set out in the Reasons), and against the legal position on reconsideration, summarised at the start of these reasons.

26. I have concluded that it is not necessary in the interests of justice to reconsider my earlier decision. There is no reasonable prospect of the original judgment being varied or revoked in the circumstances. So, the Respondent's application for reconsideration is refused under Rule 70(2).

Employment Judge Cuthbert

Date: 9 December 2025

JUDGMENT SENT TO THE PARTIES ON

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..... 10th December 2025

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FOR THE TRIBUNAL OFFICE