



EMPLOYMENT TRIBUNALS

Claimant: Ms. C Ferlin

Respondent: La Salle Education Ltd

UPON APPLICATION by the claimant made by letter dated 17 August 2025 to reconsider the judgment dated 12 June 2025 under rule 69 of the Employment Tribunal Procedure Rules 2024, and without a hearing.

JUDGMENT ON RECONSIDERATION

1. Having considered the representations made in writing by both sides, the judgment dated 12 June 2025 is set aside. The claim will be re-heard by a different Judge. I make case management orders in a separate document which will be sent to the parties with this judgment.

REASONS

Procedural background

1. The claimant applied for a reconsideration of the judgment dated 12 June 2025 by letter dated 17 August 2025. That application was forwarded to me on 18 August 2025. On 18 August I instructed the administrative staff to send the parties a notice of my provisional view that the application should be granted. Unfortunately due to an administrative error, that instruction was overlooked and notice was not sent out to the parties until 14 November 2025. I apologise to the parties for the delay that has been caused by this error.
2. On 14 November 2025 the parties were given notice that my provisional view was the application should be granted because the interests of justice required a reconsideration for the following reasons:

“The claimant, who is a litigant in person, had no advance notice of the respondent’s case because the respondent had played no part in the proceedings until shortly before the hearing. The claimant therefore had very limited opportunity to consider whether she might have any evidence to counter the respondent’s version of events

and it might be said that she did not have a fair and proper opportunity to present her case. The Judge's provisional view is that this falls within paragraph 7 of **Trimble v Supertravel Ltd [1982] IRLR 451**: "If, on the other hand, due to an oversight or to some procedural occurrence one or other party can with substance say that he has not had a fair opportunity to present his argument on a point of substance, then that is a procedural shortcoming in the proceedings before the Tribunal which, in our view, can be correctly dealt with by a review under Rule 10."

3. The respondent was given the opportunity to object to the reconsideration and both parties were asked to give their views about whether the application could be determined without a hearing. Taking account of those representations, I decided that the matter should be reconsidered and that it should be done without a hearing. The parties were notified of this on 3 December and given the opportunity to make further written representations by 27 December.
4. The claimant made further written representations and I have taken those into account along with the respondent's representations dated 1 December 2025.

The claim and the hearing on 12 June 2025

5. This is a claim for breach of contract (unpaid notice pay). The case turned on whether the claimant was dismissed, with one month's notice, in a meeting on 18 October 2024, or whether she resigned, giving one month's notice on 29 October 2024 with effect on 30 November 2024.
6. The claim was issued on 20 February 2025. The respondent did not file a response to the claim, and the matter was listed for a rule 22 hearing on 12 June 2025 at 2pm. The claimant sent her witness statement and documents in to the tribunal on 2 May 2025.
7. The respondent became aware of the claim on 2 May 2025 and instructed Peninsula to represent them on 29 May 2025. The respondent served a bundle and a witness statement at 13.27 pm on the day of the hearing, although no ET3 had been filed.
8. At the start of the hearing, it became apparent that the respondent and Peninsula were not aware that no ET3 had been filed. Peninsula were under the impression that an ET3 had already been submitted by the respondent, whereas the respondent thought that Peninsula would the ET3.
9. I adjourned the hearing to allow the respondent the opportunity to draft an ET3 and grounds of resistance and to make a written application in writing to submit it out of time. I then heard the application, including hearing evidence from Mr Cartwright, and submissions from both parties.
10. Both parties expressed the view that I should hear the claim that day. I asked the claimant if she wished to apply for a postponement but declined to do so.
11. My written reasons state as follows:

- “4. I heard evidence from Ms Ferlin and from Nick Cartwright. There was a very stark difference between the evidence of Ms Ferlin and the evidence of Mr Cartwright as to what happened in the meeting of 18 October 2024. Both witnesses came across as honest witnesses who appeared to be giving evidence to the best of their recollection. However, Mr Cartwright gave evidence that he told Ms Ferlin that her employment was terminated in that meeting and Ms Ferlin gave evidence that he did not say that. They cannot both be correct.
5. I decided to prefer the evidence of Mr Cartwright because it is consistent with the following documentation:
 - a. The messages at page 33 of the bundle. These suggest that, in Mr Cartwright’s mind, he was already definite that the claimant was leaving. On the Claimant’s case she had not given notice of her resignation by that point. The fact that Mr Cartwright was certain that she was leaving when he wrote those messages supports the respondents case. There is also a reference to Mr Cartwright being cross with Mark for not dismissing people, which is more consistent with a scenario in which Mr Cartwright, in contrast, had taken action by dismissing someone.
 - b. The email from the claimant at page 14. The email does not mention dismissal but it is at least not inconsistent with Mr Cartwright’s version. It is consistent with continuing the conversation that he says takes place at the end of the meeting where the claimant offered to improve to avoid dismissal.
 - c. The email from the respondent on 21 October. On first reading this email, I thought it seemed inconsistent with the respondent’s version of events. Having heard Mr Cartwright’s explanation I am satisfied that that paragraph two of that email was an attempt to mitigate what Mr Cartwright say was a rather extreme reaction to dismissal from the claimant. I accept that he was attempting to persuade the claimant to accept the fact that the employment had been terminated and to see the positive side of this.
6. There is also some support to the respondent’s position from the fact that Ms Ferlin did not carry out any work post 18 October. It is possible that this was because she thought they were in the process of negotiating her resignation, but more likely, in my view to be because she knew she had been dismissed.
7. I accept that the fact that Ms Ferlin later put in a letter of resignation does not support the respondent’s version of events, but it is possible that she misunderstood what happened in the meeting or thought that a dismissal needed be confirmed by a formal letter. She stated in her evidence

that 'if he considered he dismissed me I don't know why I didn't receive a formal letter specifying this because I was expecting this from him'.

8. For those reasons, on the balance of probabilities, I accepted Mr Cartwright's version of events and my findings of fact are made on that basis..."

Submissions on the reconsideration

12. The claimant has, as part of the application for reconsideration, provided contemporaneous documentation which she says supports her version of events. She says that these documents could materially have affected the outcome. The documentation consists of screenshots of messages that Ms Ferlin had sent to former colleagues on between 19-21 October, in which she says 'I had a meeting with Nick, and while he didn't say it outright, he implicitly asked me to resign, suggesting it might be best for both of us to end the collaboration. I'm not keen to stay but I'd like to negotiate the best possible terms before I leave...'
13. The claimant says that she could not have provided this evidence for the hearing on 12 June, because she only found out about the respondent's case and saw the evidence in support on the day of the hearing. She also says that she needed the consent of the individuals to rely on the messages.
14. The respondent says that the claimant could have applied to postpone the hearing to consider the response and to produce documentation, but she chose not to and believed it was most appropriate for the final hearing to go ahead. The respondent submits that the claimant had ample opportunity to discuss the new documentation in the hearing and could have raised it in her oral evidence. The respondent says there is no satisfactory explanation for why the documents were not produced for the final hearing. The claimant was already in possession of those documents before the hearing took place and should have produced them if they were relevant. The respondent says that any prejudice to the claimant is outweighed by the prejudice to the respondent in revoking the judgment.

Discussion and conclusions

15. I am satisfied that there has been procedural unfairness in this case. The claimant received the bundle and the witness statement approximately 30 minutes before the hearing began. She received the ET3 and grounds of resistance during the hearing. Although she was given time during the hearing to read the documents, it is not surprising if, as a litigant in person, she did not immediately appreciate the significance of the documents in the bundle, nor that she had some further relevant documents that could be produced.
16. The respondent says that the claimant already had the documents she now wishes to rely on and should have disclosed them in advance. However the claimant was preparing for a rule 22 hearing, where she was the only party, and when she did not yet know the respondent's case that she was given notice of dismissal in the meeting on 18 October 2024.

17. Although the claimant did not wish to make an application for postponement, I should of my own motion have considered whether it was possible to have a fair hearing, where a litigant in person had had no advance notice, not just of the content of the witness statement and the bundle but also of the contents of the grounds of resistance.
18. I conclude that the claimant did not have a fair opportunity to present her case. The documents that she had now produced are not ones that she could reasonably have anticipated were relevant before she was aware of the way in which the respondent would defend the claim, and it is not reasonable to expect her, as a litigant in person, to appreciate that in the short number of hours she had to consider the grounds of resistance, the witness statement and bundle before the claim was heard and decided. They are certainly material, given the extract from my written reasons above, in the light of the impact of the messages at p33 of the bundle.
19. I take into account the burden on the parties of ordering a re-hearing and that fact there will be delay, compounded by the workload of the tribunal and the delay already caused in this case by the administrative error.
20. It is important to strike a fair balance between the need for concluded litigation to be determinative of disputes and the desirability that the judicial process should achieve the right result. In this case there is a real danger that the result would have been different if those messages were in the bundle, and, given the extremely late notice of the respondent's participation and the nature of its case, it is reasonable that those documents were not appreciated by the claimant to be relevant before the hearing.
21. Taking all those matters into account, the judgment is set aside and will be listed for a fresh hearing before a different judge. I have issued a separate case management order.

Employment Judge Buckley

Judgement approved for issue on 8 January 2026

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