



EMPLOYMENT TRIBUNALS

Claimant: Mr P Western

Respondent: Cheshire Curtainsiders Ltd

JUDGMENT

The Respondent's application dated 4 November 2025 for reconsideration of the judgment delivered at the Employment Tribunal hearing on 25 & 26 September 2025 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked.

1 Rule 70 of the Employment Tribunal Procedure Rules 2024 (**ET Rules**) sets out the principles and the process for reconsideration:

“68(1) The Tribunal may, either on its own initiative [...] or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

[...]

70(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).

70(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked [...] the application shall be refused and the Tribunal shall inform the parties of the refusal.”

2 The Respondent's application for reconsideration was received on 4 November 2025, 14 days after the written reasons were sent to the parties on 21 October 2025 (**Reasons**), and so is made in time. The application was referred to Judge McGough on 18 December 2025.

3 The Respondent's application is made on the grounds that:

3.1 It is in the interests of justice to reconsider the Tribunal's finding not to make any reduction on *Polkey* grounds because:

3.1.1 The Tribunal was unable to fairly determine the issues in the case and make a fair decision on remedy because:

- (a) the Tribunal did not ask the Respondent's main witness (Ms Griffiths) further questions about whether the Claimant would have been dismissed if a fair process had been followed, taking into account that the Respondent's representative was not legally qualified; and
- (b) the Tribunal did not invite submissions on the *Polkey* issue from the Respondent's representative;

3.1.2 The Tribunal made findings that would be grounds for gross misconduct and therefore support a reduction on *Polkey* grounds as follows:

- (a) the Claimant had admitted smoking in his company van, which was a health and safety issue and a criminal offence; and
- (b) a petrol can, compressor and ladders were not bolted down in the van, also amounting to conduct issues; and

3.2 It is in the interests of justice to reconsider the Tribunal's decision to award a 25% reduction to the basic and compensatory award on basis of contributory fault and to instead award a reduction of 75% - 100% due to the seriousness of the Claimant's conduct.

4 The hearing was the opportunity for both parties to give evidence, ask questions, raise issues and make submissions, which they did. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters; it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can explain why the matter was not raised before. It is a fundamental requirement of litigation that there be certainty and finality.

5 The Tribunal has read through the application for reconsideration in detail. Each of the Respondent's grounds for its application are considered below.

Polkey – Tribunal assistance with evidence and submissions

6 The overriding objective in rule 3 of the ET Rules states that dealing with a case fairly and justly includes (among other things) ensuring that the parties are on an equal footing and seeking flexibility in the proceedings. The principles of natural justice require that (among other things) both parties are permitted to present their cases fully and openly, that each party is entitled to know the case they have to meet in order to succeed, and that neither party should be denied the right present relevant evidence, call witnesses or cross-examine opposing witnesses.

- 7 At the hearing, the Respondent intended to call Ms Griffiths as a witness. She is the Managing Director of the Respondent and the person who made the decision to dismiss the Claimant, so she was the Respondent's key witness. However, the Respondent had not produced a witness statement for Ms Griffiths, despite it being very clear in paragraph 3.4 of the Case Management Orders dated 17 April 2025 that the parties must provide witness statements for all witnesses whose evidence they intended to rely on in the final hearing. The Respondent's representative, Ms Neal, explained that she was not aware that the Respondent was required to produce a witness statement for Ms Griffiths if she was attending the hearing.
- 8 Taking into account the overriding objective and principles of natural justice outlined above and given the importance of Ms Griffiths' role in the Claimant's dismissal, the Tribunal proposed (and the parties agreed) that Ms Griffiths should be able to give evidence in the hearing and that the matter be dealt with by: (1) the response form and grounds of resistance being taken as her witness statement; and (2) Ms Griffiths giving oral evidence by way of cross-examination by the Claimant's representative, questions from the Tribunal, and re-examination by Ms Neal.
- 9 There must be some evidence to support a *Polkey* reduction. As set out at paragraph 40 of the Reasons, the burden of proving that an employee would have been dismissed even if a fair procedure had been followed is on the employer. It is therefore for the employer to put forward any arguments in respect of the Polkey test and to support them with evidence – Compass Group plc v Ayodele [2011] IRLR 802.
- 10 In light of the overriding objective and the principles of natural justice, Tribunals endeavour to be helpful to litigants in person and representatives who are not legally qualified, as was the case here. Nevertheless, it is the responsibility of the parties themselves to present their case and put the relevant evidence before the Tribunal. The Tribunal is not required to be purposive or inquisitorial - Joseph v Brighton and Sussex University Hospitals NHS Trust EAT 0001/15. Its function is to hear the case the parties choose to put before the Tribunal, make findings of fact, and decide the case in accordance with the law; it is not the Tribunal's function to "step into the factual and evidential arena" - Muschett v HM Prison Service 2010 IRLR 451.
- 11 *Polkey* was included in the list of issues discussed and agreed between the parties at the preliminary hearing on 17 April 2025 and set out in the list of issues sent to the parties after that hearing (paragraphs 1.25.4 and 1.25.6 of the record of the Preliminary Hearing), sent to the parties on the same day:
- "1.25.4 *Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*
- 1.25.5 *If so, should the claimant's compensation be reduced? By how much?"*

- 12 In the final hearing, the Tribunal ran through each issue in that list of issues with the parties at the start of the hearing, to ensure each party understood the issues they needed to address in the hearing. The Respondent's representative was therefore fully aware, well in advance of the hearing, that this was an issue to be determined by the Tribunal and which the Respondent would need to address in its evidence and submissions. The Respondent's representative was given a full opportunity to cross-examine the Claimant and to make submissions at the end of the hearing after the Claimant's representative had made his submissions.
- 13 For the reasons set out above, the Tribunal does not agree that it was required to (or that it was in the interests of justice to) ask Ms Griffiths questions about the *Polkey* point where no evidence was presented by the Respondent, or that it was required (or that it was in the interests of justice) to invite the Respondent's representative to make submissions on the point after she had not done so.

Polkey – Findings made by the Tribunal

- 14 As set out in paragraphs 19 and 64 of the Reasons, the Claimant admitted that he had smoked in his van. The Tribunal accepted that this was serious. However, as also set out in those paragraphs, the Claimant also said that other employees of the Respondent smoked in their company vans, and this was not challenged in any way by the Respondent. Furthermore, the Respondent did not present any evidence regarding how other employees who had smoked (or were suspected of smoking) in their vans had been dealt with, for example by having been dismissed for gross misconduct or issued with a warning.
- 15 The Tribunal found that the Claimant's conduct resulted in a number of other issues with his company van (paragraphs 17, 64 and 65 of the Reasons). It also found that Ms Griffiths considered the Claimant's actions in respect of his van amounted to gross misconduct (paragraph 29 of the Reasons). However, the Tribunal also found (set out in the same paragraph and in paragraph 57) that:
- 15.1 Ms Griffiths understood 'gross misconduct' to mean that the Respondent could dismiss the Claimant immediately, without any process or procedure, which is clearly not the case;
 - 15.2 The issues with the Claimant's van had happened on previous occasions and that Ms Griffiths had spoken to the Claimant about it numerous times, sometimes helping him to clean it out;
 - 15.3 The Respondent did not issue the Claimant with any formal warnings about the issues with his van;
 - 15.4 As a consequence of the Respondent's approach, the Claimant was not aware that continued or more serious issues with the van could result in his dismissal;
 - 15.5 The Respondent had therefore jumped from having informal discussions with the Claimant about his van to dismissing him with immediate effect.

- 16 It may have been the case that if the Claimant had previously been given a formal warning about the condition of his van (including that it could result in his dismissal if it did not get better), his conduct could have improved thereby avoiding any dismissal. The Tribunal therefore does not accept that, on the basis of its findings of fact or otherwise, there was evidence that a decision to dismiss would have been fair and within the band of reasonable responses had a fair investigation or process taken place, as submitted by the Respondent in its application.
- 17 For the reasons set out above, the Tribunal does not agree that it made findings that would support a deduction on *Polkey* grounds.

Contributory fault

- 18 The amount of any reduction of the basic award and compensatory award is for the Tribunal to decide on the basis of what it considers to be just and equitable.
- 19 The Tribunal considered all the circumstances of the Claimant's conduct when deciding to reduce both awards by 25%. The most serious element of his conduct was his admission that he had been smoking in his van. However, given his evidence that other employees also smoke in their company vans (which was not challenged by the Respondent), the Tribunal also took into consideration that this conduct was more widespread within the Respondent's workforce.
- 20 The Tribunal also took into consideration the other elements of the Claimant's conduct, which it had found to be less serious than the smoking, but nevertheless blameworthy.

Conclusion

- 21 Having considered all of the grounds of the Respondent's application, there is nothing which indicates it is in the interests of justice to re-open matters. The Respondent had the opportunity to present evidence and make submissions on *Polkey* at the hearing and the Tribunal took into account all the circumstances concerning the Claimant's conduct when it decided it was just and equitable to reduce the basic and compensatory awards by 25%. The Tribunal has therefore exercised its discretion to refuse the application for reconsideration as there is no reasonable prospect of the judgment being varied or revoked.
- 22 The Respondent's application for a reconsideration is therefore rejected.

Approved by
Employment Judge **McGough**
5 January 2026